

TASB ENERGY COOPERATIVE
INTERLOCAL PARTICIPATION AGREEMENT

This Interlocal Participation Agreement ("Agreement") is made and entered into by and between TASB Energy Cooperative ("Energy 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 ("Energy Cooperative Member").

I. RECITALS

WHEREAS, a local government entity is authorized by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, to agree with other local government entities to form a cooperative; and

WHEREAS, the Energy Cooperative is further authorized as a local purchasing cooperative organization as set forth in Section 271.101, *et seq.*, of the Texas Local Government Code; and

WHEREAS, the purpose of this Agreement is to facilitate compliance with state procurement requirements, to identify qualified vendors of electricity and related services, to relieve the burdens of the governmental purchasing function, and to realize the various potential economies, including administrative cost savings, for Energy Cooperative Members; and

WHEREAS the Energy Cooperative has contracted with the Texas Association of School Boards, Inc. ("TASB"), a Texas nonprofit corporation and an Electricity Aggregator registered with the Texas Public Utility Commission, to administer an electricity aggregation program for Energy Cooperative members;

NOW THEREFORE, in consideration of the mutual covenants, promises and obligations contained herein, the undersigned Energy Cooperative Member and the Energy Cooperative agree as follows.

II. TERMS AND CONDITIONS

1. **Adopt Charter Interlocal Cooperation Agreement.** The Energy Cooperative Member by the execution or acceptance of this Agreement hereby adopts and approves the Charter Interlocal Agreement effective as of January 16, 2008, which agreement is incorporated herein by reference (and is available from the Energy Cooperative upon request). The Charter Interlocal Agreement established the Energy Cooperative as an administrative agency of its collective participants, and Energy Cooperative Member agrees to become a participant or additional party to that Charter Interlocal Agreement.
2. **Term.** The initial term of this Agreement shall commence on the date it is executed by both parties and shall automatically renew for successive one-year terms unless sooner terminated in accordance with the provisions of this Agreement.
3. **Services.** The Energy Cooperative shall provide, through its administrator, TASB, Energy Cooperative Member with opportunities to procure electricity for the facilities of Energy Cooperative Member.

- (a) The Energy Cooperative shall require that TASB, from time to time, (i) conduct a competitive procurement process to recommend to the Energy Cooperative the selection of a Retail Electric Provider to serve members of the Energy Cooperative and (ii) negotiate the terms of an Electricity Supply Agreement for the purchase of electricity by members of the Energy Cooperative and the Retail Electric Provider. The Energy Cooperative, through its administrator, may offer Energy Cooperative Member the opportunity to participate in an Aggregation Pool with other members of the Energy Cooperative to purchase electricity or it may arrange for the purchase of electricity by the Energy Cooperative Member individually and not as part of an Aggregation Pool.
 - (b) Neither the Energy Cooperative nor its administrator, TASB, shall be responsible for addressing customer service issues relating to Energy Cooperative Member's electric service that occur during the term of the Electricity Supply Agreement. Energy Cooperative Member shall resolve such issues directly with its local utility or the Retail Electric Provider, as appropriate.
4. **Obligations of Energy Cooperative Member.** Energy Cooperative Member agrees to perform the following obligations;
- (a) When requested by Energy Cooperative or TASB from time to time, Energy Cooperative Member shall execute a Notice of Intent to Participate ("Notice of Intent"), stating whether it desires to join a specific Aggregation Pool. If Energy Cooperative Member fails to execute such Notice of Intent by the due date stated on the Notice of Intent, then Energy Cooperative Member's facilities will not be included in the Aggregation Pool and Energy Cooperative Member shall have the responsibility for procuring electricity independently of the Energy Cooperative.
 - (b) When requested by Energy Cooperative or TASB from time to time, Energy Cooperative Member shall (i) execute a Letter of Authorization, authorizing TASB or a Retail Electric Provider to obtain the Energy Cooperative Member's electricity usage data from the local utility and/ or (ii) provide to TASB or its designee a listing of current account information for each of Energy Cooperative Member's accounts, including ESI ID number, address, current retail electric provider, and billing and load data, such as energy and demand usage and associated charges for the previous 12 months' electric usage by individual meter. Such information shall be provided using the standardized electronic format provided by TASB, by the date stated by TASB. Energy Cooperative Member shall be responsible for the accuracy of such data. **Neither the Cooperative nor TASB nor other members of the Energy Cooperative will be liable for any costs incurred by Energy Cooperative Member as a result of errors or omissions in its account information or historical load data provided to TASB.**
 - (c) If Energy Cooperative Member has executed an Electricity Supply Agreement with the Retail Electric Provider awarded by the Energy Cooperative, then Energy Cooperative Member shall notify TASB in the event that it has or obtains new or additional metered accounts (including obtaining an ESI ID for an account) during the term of the Electricity Supply Agreement to determine whether the new or additional metered accounts may be served by the selected Retail Electric Provider at applicable competitive market prices existing as of the time the ESI IDs are added and in accordance with the terms of the existing contract with the Retail Electric Provider awarded by the Energy Cooperative. Energy Cooperative Member agrees and acknowledges that

new or additional metered accounts (if any) may only be added pursuant to the terms of the contract with the Retail Electric Provider.

- (d) If Entity is not participating in an Aggregation Pool and if executable electricity pricing provided by the Energy Cooperative or its administrator, TASB, is acceptable to Energy Cooperative Member, then Energy Cooperative Member shall execute the Electricity Supply Agreement and all other terms of this Agreement shall apply.

5. **Termination.**

- (a) **By the Energy Cooperative Member.** This Agreement may be terminated by the Energy Cooperative Member at any time by giving thirty (30) days prior written notice to the Energy Cooperative, provided any amounts owed to the Energy Cooperative and any vendor have been fully paid. Notwithstanding the foregoing, this Agreement shall continue in effect during the term specified in an Electricity Supply Agreement, Letter of Commitment, or other contractual obligation which the Energy Cooperative Member has with the Retail Electricity Provider, TASB or the Energy Cooperative.
- (b) **By the Energy Cooperative.** The Energy Cooperative may terminate this Agreement by:
 - (1) Giving ten (10) days notice by certified mail to the Energy Cooperative Member if the Energy Cooperative Member breaches this Agreement; or
 - (2) Giving thirty (30) days notice by certified mail to the Energy Cooperative Member with or without cause. Notwithstanding the foregoing, this Agreement shall continue in effect during the term specified in a Letter of Commitment or other existing contractual obligation.
- (c) **Termination Procedure.** If the Energy Cooperative Member terminates its participation under this Agreement or breaches this Agreement, or if the Energy Cooperative terminates participation of the Energy Cooperative Member, the Energy Cooperative Member shall bear the full financial responsibility for its commitments to vendors under or through this Agreement. In addition, the Energy Cooperative Member agrees that it will not be entitled to any funds from the Energy Cooperative after it terminates its participation. .

6. **Payments by Energy Cooperative Member.**

Energy Cooperative Member agrees that the Energy Cooperative and its administrator, TASB, should be fairly compensated for the services provided under and through this Agreement. Therefore, it is agreed that the Energy Cooperative and/or its administrator, TASB, is authorized to receive payment, directly or indirectly, from the Retail Electric Provider(s), and the amount of such aggregation fees (“Aggregation Fees”) shall be disclosed in the Letter of Commitment, Energy Supply Agreement or any other contract which binds the Energy Cooperative Member to the purchase of electricity. Energy Cooperative Member understands and agrees that such Aggregation Fees may be included in the price of electricity it will pay to the Retail Electric Provider. Further, Energy Cooperative Member affirmatively disclaims any rights to such Aggregation Fees, acknowledging that all such fees are the property of the Energy Cooperative and/or TASB. Similarly, in no event shall an Energy Cooperative Member be directly responsible for payment of Aggregation Fees.

7. **Distribution.** At the sole discretion of the Energy Cooperative Board of Trustees, the Energy Cooperative may issue a distribution to Energy Cooperative Members under a plan developed by the Board. Energy Cooperative Member acknowledges that a distribution is generally not contemplated, never guaranteed, and depends on the overall financial condition of the Energy Cooperative.
8. **Administration.** The Energy Cooperative may enter into contracts with others, including non-profit associations, for the administration, operation, sponsorship and endorsement of the electricity program provided by this Agreement. Energy Cooperative Member acknowledges and agrees that the Energy Cooperative has contracted with TASB as administrator and Electricity Aggregator for the Energy Cooperative and that such relationship is authorized by Section 791.013 of the Texas Government Code.

III. GENERAL PROVISIONS

1. Definitions.

“Aggregation Pool” means an aggregation in which the electricity requirements of a member of the Energy Cooperative are joined with the electricity requirements of other members of the Energy Cooperative to create a purchasing unit for the purchase of electricity.

“Electricity Aggregator” means an entity that has registered with the Texas Public Utility Commission to aggregate individual electricity customers into a purchasing unit for the purchase of electricity from a Retail Electric Provider.

“Electricity Supply Agreement” means the agreement between the Retail Electric Provider and the Energy Cooperative Member to sell and purchase electricity, the terms of which have been negotiated between TASB, as administrator of the Energy Cooperative and the Retail Electric Provider.

“ESI ID” means the unique number that is the electric service identifier for each of Energy Cooperative Member’s accounts.

“Letter of Commitment” means an agreement executed by Energy Cooperative Member committing Energy Cooperative Member to purchase electricity from the Retail Electric Provider awarded by the Energy Cooperative, provided that the electricity price offered by the Retail Electric Provider is at or below a capped price set forth in the Letter of Commitment.

“Notice of Intent to Participate” means a document that Entity may be asked to execute stating whether the Entity desires to join a specific Aggregation Pool.

“Retail Electric Provider” or *“REP”* means an entity that is certified by the Public Utility Commission of Texas to sell electricity to retail customers in Texas.

2. **Amendment by Notice.** The Board may amend this Agreement, provided that prior written notice is sent to the Energy Cooperative Member at least 60 days prior to the effective date of any change described in such amendment and provided that the Energy Cooperative Member does not terminate its participation in the Energy Cooperative before the expiration of said 60 days.

3. **Authorization to Participate and Compliance with Local Policies.** Each Energy Cooperative Member represents and warrants that its governing body has duly authorized its participation in the Energy Cooperative and that the Energy Cooperative Member will comply with all state and local laws and policies pertaining to purchasing of electricity through its membership in the Energy Cooperative.
4. **Bylaws.** The Energy Cooperative Member agrees to abide by the Bylaws of the Energy Cooperative, as they may be amended, and any and all written policies and procedures established by the Energy Cooperative.
5. **Cooperation and Access.** The Energy Cooperative Member agrees that it will cooperate in compliance with any reasonable requests for information and/or records made by the Energy Cooperative. The Energy Cooperative reserves the right to audit the relevant records of any Energy 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 Energy Cooperative Member.
6. **Coordinator.** The Energy Cooperative Member agrees to appoint a program coordinator who shall have express authority to represent and bind the Energy Cooperative Member, and the Energy 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 Energy Cooperative Member. The Energy Cooperative Member reserves the right to change the coordinator as needed by giving written notice to the Energy Cooperative. Such notice is not effective until actually received by the Energy Cooperative.
7. **Current Revenue.** The Energy Cooperative Member hereby warrants that all payments, fees, and disbursements required of it hereunder shall be made from current revenues budgeted and available to the Energy Cooperative Member.
8. **Defense and Prosecution of Claims.** The Energy Cooperative Member authorizes the Energy 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 Energy Cooperative in any litigation, claim or dispute which arises from the services provided by the Energy Cooperative on behalf of its members, collectively or individually. Neither this provision nor any other provision in this Agreement will create a legal duty for the Energy Cooperative to provide a defense or prosecute a claim; rather, the Energy Cooperative may exercise this right in its sole discretion and to the extent permitted or authorized by law. The Energy Cooperative Member shall reasonably cooperate and supply any information necessary or helpful in such prosecution or defense. Subject to specific revocation, the Energy Cooperative Member hereby designates the Energy Cooperative to act as a class representative on its behalf in matters arising out of this Agreement. However, nothing herein shall preclude an Energy Cooperative Member from pursuing, either independently or in conjunction with the Energy Cooperative, a claim against a vendor with whom the member has a contractual agreement that was entered into through the Energy Cooperative's program.
9. **Governance.** The Board of Trustees (Board) will govern the Energy Cooperative in accordance with its Bylaws.

10. **Jurisdiction/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and, to the extent permitted by law, venue for all disputes arising under this Agreement shall lie in Travis County, Texas.
11. **Legal Authority.** The Energy Cooperative Member represents and warrants to the Energy Cooperative the following:
- a) It is a political subdivision of the state of Texas and it meets the definition of “Local Government” or “State Agency” under the Interlocal Cooperation Act (“Act”), Chapter 791 of the Texas Government Code.
 - b) The functions and services to be performed under the Agreement will be limited to “Administrative Functions” as defined in the Act, which includes purchasing.
 - c) It possesses the legal authority to enter into this Agreement and can allow this Agreement to automatically renew without subsequent action of its governing body.
 - d) Purchases made under this Agreement will satisfy all procedural procurement requirements that the Energy 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.
12. **Disclaimer.** THE ENERGY COOPERATIVE AND ITS ENDORSER AND SERVICING CONTRACTOR (TEXAS ASSOCIATION OF SCHOOL BOARDS, INC.) DO NOT WARRANT THAT THE OPERATION OR USE OF SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. NEITHER THE ENERGY COOPERATIVE NOR TASB CAN CONTROL THE DELIVERY OR FLOW OF ELECTRICITY AND NEITHER SHALL HAVE ANY LIABILITY FOR ANY DAMAGES OR CONSEQUENCES THAT MAY OCCUR IF ELECTRICITY IS INTERRUPTED FOR ANY REASON.

THE ENERGY COOPERATIVE AND ITS ENDORSER AND SERVICING CONTRACTOR 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 AND ACKNOWLEDGE THAT THE CUSTOMER PROTECTION RULES ADOPTED BY THE TEXAS PUBLIC UTILITY COMMISSION (AS CONTAINED IN PUC SUBSTANTIVE RULES 25.471 ET. SEQ.) DO NOT APPLY TO THIS AGREEMENT AND ENERGY COOPERATIVE MEMBER WAIVES SUCH CUSTOMER PROTECTION RULES TO THE FULLEST EXTENT PERMITTED BY LAW.

13. **Limitation of Liability.** Without waiver of the disclaimer or other limitation of liability in this Agreement, the parties agree as follows:
- (a) Neither party waives any immunity from liability afforded under law.
 - (b) In regard to any lawsuit or formal adjudication arising out of or relating to this Agreement, neither party shall be liable to the other under any circumstance for special, incidental, consequential, or exemplary damages.
 - (c) The maximum amount of damages recoverable will be limited to the amount of fees which the Energy Cooperative and TASB received, directly or indirectly, as a direct result of the Energy Cooperative Member’s purchase activity within 24 months of when the lawsuit or action was filed.

Vendors or providers of electric power through the Energy Cooperative's program are not governed by this provision.

(d) In the event of a lawsuit or formal adjudication the prevailing party will be entitled to recover reasonable attorney's fees pursuant to Section 271.159 of the Texas Local Government Code.

14. **Limitation of Rights.** Except as otherwise expressly provided in this Agreement, nothing in this Agreement, is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Agreement.
15. **Merger/Entirety.** This Agreement, together with the Energy Cooperative's Bylaws and Charter Interlocal Agreement, represents the complete understanding of the Energy Cooperative and Energy Cooperative Member. To the extent there exists any conflict between the terms of this Agreement and that of prior agreements, the terms of this Agreement shall control and take precedence over all prior agreements.
16. **Notice.** Unless otherwise provided in this Agreement, any written notice to the Energy Cooperative shall be made by first class mail, postage prepaid, and delivered to James B. Crow, Executive Director, Texas Association of School Boards, Inc., P.O. Box 400, Austin, Texas 78767-0400. Notices to Energy Cooperative Member may be made by first class mail, postage prepaid, and delivered to the Energy Cooperative Member's Coordinator or chief executive officer (e.g., superintendent, city manager, county judge or mayor).
17. **Severability.** If any portion of this Agreement shall be declared illegal or held unenforceable for any reason, the remaining portions shall continue in full force and effect.
18. **Signatures/Counterparts.** The failure of a party to provide an original, manually executed signature to the other party will not affect the validity, enforceability or binding effect of this Agreement because either party may rely upon a facsimile signature as if it were an original. Furthermore, this Agreement may be executed in several separate counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
19. **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.

[The remainder of this page was intentionally left blank.]

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, accept this Agreement.

TASB ENERGY COOPERATIVE,
as acting on behalf of all other Energy Cooperative Members

By: _____
James B. Crow, Secretary

Date: _____

TO BE COMPLETED BY ENERGY COOPERATIVE MEMBER:

(Name of Local Government)

By: _____ Date: _____
Signature of authorized representative

Printed name and title of authorized representative

Coordinator for the Energy
Cooperative Member is:

Name

Mailing Address

City

Texas, _____

(zip)

Telephone

Fax

Email

Approved by the Board of Trustees January 31, 2008

BOARD RESOLUTION

of

(Name of Local Government)

Energy Cooperative Member

WHEREAS, the _____, (hereinafter “Energy Cooperative Member”) desires to participate in a local government cooperative purchasing program pursuant to the authority granted by Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act (“Act”);

WHEREAS, _____, has elected to be an Energy Cooperative Member in the TASB Energy Cooperative (hereinafter “Energy Cooperative”), a local government purchasing energy cooperative program created by local governments in accordance with and pursuant to the Act and Section 271.101, *et seq.*, of the Texas Local Government Code;

WHEREAS, the Energy Cooperative Member, is of the opinion that participation in the Energy 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 Energy Cooperative Member desires to participate and join with other local governments in an Interlocal Participation 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 Energy Cooperative Member requests that its electric power needs be included in the Energy Cooperative’s procurement program and that the Energy Cooperative select vendors for those needs so that Energy Cooperative Members may purchase electricity through contracts made available through such program; and that Energy Cooperative is authorized to sign and deliver necessary requests and other documents in connection therewith for and on behalf of the Energy Cooperative Members that have elected to participate.

FURTHER, BE IT RESOLVED, that the Board of Trustees of the Energy Cooperative Member authorizes its Board President, Superintendent or other officer to execute the Interlocal Participation Agreement which includes the adoption and approval of the Charter 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 Energy Cooperative Member and eligible local governments to become members of the Energy Cooperative upon the terms and conditions stated in the Interlocal Participation Agreement. The governing body 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 _____, on the _____ day of _____, in
(Name of Local Government)
the year _____, and that the same now appears of record in its official minutes.

_____, Energy Cooperative Member
(Name of Local Government)

By: _____ Date: _____
Authorized Representative

(Title)

ATTEST:

Secretary Date: _____