

## INTERSTATE INTERLOCAL PARTICIPATION AGREEMENT

for

### The Local Government Purchasing Cooperative

This Interlocal Participation Agreement ("Agreement") is made and entered into by and between the The Local Government Purchasing Cooperative ("Cooperative"), an administrative agency of cooperating governmental entities, acting on its own behalf and the behalf of all participating governmental entities, and the undersigned local government or state agency ("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, (Interlocal Cooperation Contracts) of the Texas Government Code ("the Act"), to agree with other local governments of this state or another state to provide administrative functions that include purchasing; and

WHEREAS, the Cooperative is an administrative agency of governmental entities cooperating in the discharge of their governmental functions; and

WHEREAS, the Cooperative Member has represented that it is an eligible entity under the Act, and desires to contract with the Cooperative.

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.

## TERMS AND CONDITIONS

1. **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-bidding 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.
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. 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) Payment for goods, materials and services; 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. Cooperative reserves the right to make changes in the scope of products, services, and contracts available through the Cooperative at anytime without posting any advance notice.

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 system of electronic commerce for the local governments and state agencies.
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.
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, 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.

IN NO EVENT SHALL COOPERATIVE, ITS ENDORSERS AND SERVICING CONTRACTORS HAVE ANY FINANCIAL OR LEGAL LIABILITY TO THE COOPERATIVE MEMBER FOR ANY GOODS OR SERVICES PURCHASED THROUGH THE AGREEMENT OR FOR THE COOPERATIVE MEMBER MEETING ANY OR ALL LOCAL OR STATE REQUIREMENTS FOR COMPETITIVE BIDDING AND PURCHASING.

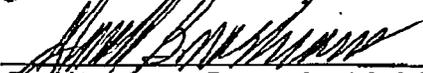
10. **Merger.** This Interlocal Participation Agreement, Terms and Conditions, and General Provisions, together with the Bylaws, and Exhibits, represents the complete understanding of the Cooperative, and Cooperative Member electing to participate in the Cooperative.

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.

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: 12-16-08  
Gerald Brashears, Cooperative Administrator

**TO BE COMPLETED BY COOPERATIVE MEMBER:**

City of Peoria, Arizona A Municipal Corporation  
(Name of Governmental Entity)

8401 W. Monroe Street  
(Mailing Address)

Peoria, AZ 85345  
(City) (State) (Zip Code)

By:  Date: 12-5-2008  
Signature of authorized representative of Cooperative Member

Herman Koebergen, Materials Manager  
Printed name and title of authorized representative

Coordinator for the

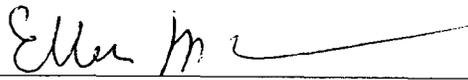
Cooperative Member is:

Lisa Houg, Contract Officer  
Name  
8401 W. Monroe Street  
Street Address  
Peoria  
City  
AZ, 85345  
State Zip Code  
( 623 ) 773-7191  
Telephone  
( 623 ) 773-7118  
Fax  
Lisa.Houg@peoriaaz.gov  
Email

CITY OF PEORIA, ARIZONA  
A Municipal Corporation

Approved as to form:

**Ellen Van Riper, Assistant City Attorney**

  
\_\_\_\_\_  
Stephen M. Kemp, City Attorney  
City of Peoria

Attested by:

  
\_\_\_\_\_  
For Mary Jo Kief, City Clerk  
City of Peoria

