

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" or "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, transportation fuel and other types of energy products, commodities, and services (collectively "energy 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, to administer energy services-related programs 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. **Definitions.** As used throughout this Agreement, the following terms shall have the meanings set forth below unless otherwise indicated in this Agreement, regardless of whether initial capitalization or italics are used consistently. Further, the below terms may be described differently in other documents, but substance shall prevail over form in such instances.

"Aggregation Pool" means an aggregation in which the requirements of a member of the Energy Cooperative for certain energy services are joined with the requirements of other members of the Energy Cooperative to create a purchasing unit for the purchase of those energy services.

"Energy Services Agreement" means a form purchase, sales, supply or other agreement between an energy services vendor and the Energy Cooperative Member to sell and purchase energy services, the terms of which may have been negotiated between TASB, as administrator of the Energy Cooperative, and the vendor.

"Energy Services Vendor" means a vendor authorized by the Energy Cooperative to sell energy services to an Energy Cooperative Member. Without limiting the generality of this definition, the term

includes a retail electric provider (“REP”), an entity certified by the Texas Public Utility Commission to sell electricity to retail customers in Texas.

“*Letter of Commitment*” means an agreement executed by the Energy Cooperative Member committing the Member to join a specific Aggregation Pool and/or purchase energy services from the Energy Services Vendor awarded by the Energy Cooperative and establishing the terms applicable to such purchase.

2. 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 the Energy Cooperative Member agrees to become a participant or additional party to that Charter Interlocal Agreement.

3. Term.

(a) 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.

(b) If the Energy Cooperative Member is an existing Member that joined the Energy Cooperative by executing a participation agreement which authorized amendment upon the Energy Cooperative providing 60 days prior notice, then this Agreement will be deemed an **Amendment by Notice**, which will be effective on the 65th day after the date the Energy Cooperative Member is sent notice of this document. In addition, this Agreement will continue to automatically renew for successive one-year terms on the anniversary date of the Energy Cooperative Member’s initial term (not the effective date of the Amendment by Notice), unless the Agreement is sooner terminated in accordance with the provisions herein.

4. Services. The Energy Cooperative, through its administrator, TASB, shall provide the Energy Cooperative Member with opportunities to procure energy services through programs established by the Energy Cooperative, including the electricity aggregation and the fixed-rate transportation fuel programs, pursuant to the terms and conditions that the Energy Cooperative establishes for the Member’s participation in such programs. As a general matter, with respect to the establishment and administration of such programs:

(a) The Energy Cooperative shall require that TASB, from time to time, (i) conduct a competitive procurement process, using any means permitted by Texas law, to recommend to the Energy Cooperative the selection of one or more Energy Services Vendors to serve members of the Energy Cooperative; and (ii) negotiate with such Vendor(s) the terms of an Energy Services Agreement for the purchase of energy services by members of the Energy Cooperative. The Energy Cooperative, through TASB, may offer the Energy Cooperative Member the opportunity to participate in an Aggregation Pool with other members of the Energy Cooperative to purchase energy services, or it may arrange for the purchase of energy services by the Energy Cooperative Member individually and not as part of an Aggregation Pool.

(b) Neither the Energy Cooperative nor TASB shall be responsible for addressing customer service issues relating to the Energy Cooperative Member’s energy services that occur under any Energy

Services Agreement. The Energy Cooperative Member shall resolve such issues directly with the Energy Services Vendor or, in the case of electricity, its local utility or the REP.

5. **Obligations of Energy Cooperative Member.** The Energy Cooperative Member agrees to perform the following obligations:

- (a) When requested by the Energy Cooperative or TASB from time to time, the Energy Cooperative Member shall execute a Letter of Commitment and such other documentation as the Energy Cooperative may require for the Member to participate in an Aggregation Pool. If the Energy Cooperative Member fails to execute such Letter of Commitment or other documentation as required, the Energy Cooperative Member will not be allowed to participate in the Aggregation Pool.
- (b) If the Energy Cooperative Member is not participating in an Aggregation Pool and if executable energy services pricing provided by the Energy Cooperative or its administrator, TASB, is acceptable to the Energy Cooperative Member, then the Energy Cooperative Member will execute the Energy Services Agreement to purchase such energy services.

6. **Termination.**

- (a) **By the Energy Cooperative Member.** This Agreement may be terminated by the Energy Cooperative Member at any time by giving 30 days prior written notice to the Energy Cooperative, provided any amounts owed to the Energy Cooperative and any Energy Services Vendor have been fully paid. Notwithstanding the foregoing, this Agreement shall continue in effect during the term specified in any Letter of Commitment, Energy Services Agreement, or other contractual obligation which the Energy Cooperative Member has with the Energy Services Vendor, TASB or the Energy Cooperative under an Energy Cooperative program.
- (b) **By the Energy Cooperative.** The Energy Cooperative may terminate this Agreement by:
 - (1) Giving 10 days notice by certified mail to the Energy Cooperative Member if the Energy Cooperative Member breaches this Agreement; or
 - (2) Giving 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 Energy Services 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.

7. **Aggregation Fees.** The Energy Cooperative Member agrees that the Energy Cooperative and its administrator, TASB, shall be fairly compensated for the services provided under and through this Agreement. Therefore, it is agreed that the Energy Cooperative and/or TASB is authorized to receive payment, directly or indirectly, of aggregation, administrative or service fees (collectively “Aggregation

Fees”) from Energy Services Vendors. The amount of such Aggregation Fees shall be disclosed in the Letter of Commitment, Energy Services Agreement, or any other contract which binds the Energy Cooperative Member to the purchase of energy services. The Energy Cooperative Member understands and agrees that such Aggregation Fees may be included in the price of energy services the Cooperative Member pays the Energy Services Vendor. Further, the 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 the Energy Cooperative Member be directly responsible for payment of Aggregation Fees.

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

III. GENERAL PROVISIONS

1. **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.
2. **Authorization to Participate and Compliance with Local Policies.** The 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 energy services, including without limitation electricity, through its membership in the Energy Cooperative.
3. **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.
4. **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 10 days written notice to the Energy Cooperative Member.
5. **Coordinator.** The Energy Cooperative Member agrees to appoint a program coordinator for each energy services program in which the Member participates. The coordinator 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.

6. Fiscal Responsibility.

(a) The Energy Cooperative Member is not responsible for the payment of any sum of money to the Energy Cooperative, TASB, or an Energy Services Vendor solely by reason of the Member's execution of this Agreement. A payment obligation for the Member will only arise under the terms and provisions of a Letter of Commitment, Energy Services Agreement, or other separate contractual document entered into by the Member.

(b) 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 Member.

7. 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 the Energy Cooperative Member from pursuing, either independently or in conjunction with the Energy Cooperative, a claim against an Energy Services Vendor with whom the Member has a contractual agreement that was entered into through an Energy Cooperative program.

8. Governance. The Board will govern the Energy Cooperative in accordance with its Bylaws.

9. 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.

10. 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 this 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 the Agreement to automatically renew or be amended 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 this Agreement have been met.

11. Disclaimer. THE ENERGY COOPERATIVE, AND ITS ENDORSER(S) AND SERVICING CONTRACTOR (TASB), DO NOT WARRANT THAT THE OPERATION OR USE OF SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. NEITHER THE ENERGY COOPERATIVE NOR ITS ENDORSER(S) OR SERVICING CONTRACTOR CAN CONTROL THE DELIVERY OF ENERGY SERVICES, INCLUDING WITHOUT LIMITATION THE DELIVERY OR FLOW OF ELECTRICITY OR FUEL, AND NEITHER SHALL HAVE ANY LIABILITY FOR ANY DAMAGES OR CONSEQUENCES THAT MAY OCCUR IF ENERGY SERVICES ARE INTERRUPTED OR NOT TIMELY DELIVERED FOR ANY REASON.

THE ENERGY COOPERATIVE AND ITS ENDORSER(S) 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 THE ENERGY COOPERATIVE MEMBER WAIVES SUCH CUSTOMER PROTECTION RULES TO THE FULLEST EXTENT PERMITTED BY LAW.

12. 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, its servicing contractor, or endorser(s) 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. Energy Services Vendors in an Energy Cooperative 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 that are equitable and just.
- 13. 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.
- 14. Entirety and Effect on Prior Agreements.** Upon taking effect as provided for herein, this Agreement, together with the Energy Cooperative's Bylaws and Charter Interlocal Agreement, represents the complete understanding of the Energy Cooperative and the Energy Cooperative Member. The terms of this Agreement shall control and take precedence over all prior agreements; provided, however, that the terms of a prior agreement between the Energy Cooperative and the Member will govern the Member's participation in any Aggregation Pool or purchase established under such prior agreement.
- 15. 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. The Energy Cooperative Member shall designate a general contact person, and notices to the Member that involve general matters may be made by first class mail, postage prepaid, and delivered to such contact person or the Member's chief executive officer (e.g., superintendent, city manager, county judge or mayor). Notices regarding specific Energy Cooperative programs may be made by first class mail, postage prepaid, and delivered to the program coordinator designated by the Member.
- 16. 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.
- 17. 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 or imaged 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.
- 18. 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 is intentionally left blank. Signatures are on following page.]

WHEREFOR, the parties, acting through their duly authorized representatives, accept this Agreement.

TASB ENERGY COOPERATIVE

By: _____ Date: _____
James B. Crow, Secretary

TO BE COMPLETED BY ENERGY COOPERATIVE MEMBER:

(Name of Local Government)

By: _____ Date: _____
Signature of authorized representative

Printed name and title of authorized representative

General Contact for the Energy
Cooperative Member :

Name

Mailing Address

City
Texas, _____
(zip)

Telephone

Fax

Email