

THE STATE OF TEXAS
COUNTY OF MONTGOMERY

**INTERLOCAL COOPERATIVE AGREEMENT
FOR
CHILD NUTRITION PRODUCTS AND SERVICES**

This Interlocal Cooperative Agreement ("Agreement") is made and entered into pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code (the "Act"), by and between the NEW CANEY INDEPENDENT SCHOOL DISTRICT ("NCISD"), having its principal place of business at 21580 Loop 494, New Caney, TX 77357, and acting as the administrator of participating and cooperating local governments, and the undersigned participating local governments ("Participants" or "Participating Districts", or "Cooperative Members") of the State of Texas.

WITNESSETH:

WHEREAS, the NCISD is an independent school district and political subdivision of the State of Texas, operating under the Texas Education Code;

WHEREAS, the NCISD and the Participating Districts seek to obtain substantial savings on specific Child Nutrition Products and Services through volume purchasing and other economies of scale, and seek to purchase the highest quality products for the best price and achieve maximum efficiencies, while complying with all Federal and State nutritional requirements;

WHEREAS, the purpose of this Agreement is to facilitate compliance with state procurement requirements, to identify qualified vendors of commodities, goods and services, to relieve the burdens of the governmental purchasing functions, to increase the efficiency and effectiveness of local governments, and to realize the various potential economies, including administrative cost savings, for Participants;

WHEREAS NCISD is acting as an authorized local purchasing cooperative organization ("Cooperative") as set forth in Section 271.101 et seq., of the Texas Local Government Code, and NCISD's Board of Trustees approved a resolution authorizing the formation of this cooperative purchasing agreement at its Board meeting held on November 12, 2018; and

WHEREAS, pursuant to the Act, NCISD is authorized to contract with eligible and Participating Districts to perform governmental functions and services, including the development of a standard approach for acquisition of goods and services, that each Participating District is authorized by law to perform;

WHEREAS, in reliance on such authority, NCISD has developed a program for cooperative purchasing under which it performs procurement with Participating Districts;

WHEREAS, Participants have represented that each is an eligible entity under the Act, that each governing Board has approved entering into this Agreement and has authorized the execution of this Agreement by the Participants' authorized officer or agent; and

WHEREAS, Participants desire to participate in the NCISD's cooperative purchasing effort and the parties desire agrees upon the purpose, terms, right and duties of the contracting parties:

NOW THEREFORE, NCISD and the undersigned Participants do hereby agree as follows:

ARTICLE 1: Legal Authority

Each Participant represents to NCISD that (1) it meets the definition of "Local Government" or "State Agency" under the Act; (2) the functions and services to be performed under this Agreement will be limited to "administrative functions" as defined in the Act, which includes purchasing; (3) 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; (4) purchases made under this Agreement will satisfy all procedural procurement requirements that the Cooperative Member must meet under all applicable local policy, regulation, or state law; and (5) all requirements for a Board approval or for a third party to approve, record or authorize this Agreement have been met.

ARTICLE 2: Applicable Laws

NCISD and the Participants agree to conduct all activities under this Agreement in accordance with all applicable rules, regulations, and laws in effect or promulgated during the term of this Agreement.

ARTICLE 3: Whole Agreement

This Agreement, including "Exhibit A", and any attachments, as provided herein, constitute the complete Agreement between the parties hereto, and supersede any and all oral or written agreements between the parties relating to matters herein.

ARTICLE 4: NCISD's Role and Responsibilities

NCISD agrees to:

Initiate and implement activities related to the bidding and vendor selection process in accordance with competitive bidding procedures for Texas public schools. During this process, NCISD will host Cooperative member user group meetings for development of food service purchasing and product sampling. The final bid selection will be made by the Product Selection Committee as defined in Article 7.

Provide financial information generated by this Cooperative no less than annually to all Participants and will include these records as part of its annual financial audit.

Perform such contractual services and responsibilities with reasonable care, skill, judgment, and in a professional and business-like manner.

Provide the personnel, office, telephones, desks, and all other property, facilities or equipment not provided by the vendor, but which may be necessary to perform the functions outlined herein.

Ensure vendor's compliance with all provisions related to the quality of the items in the Vendor Agreement and the terms for delivery of same.

ARTICLE 5: Participant's Role and Responsibilities

Participants agree as follows:

The Participants shall purchase Child Nutrition Products and Services in accordance with the Letter of Commitment referred to in Article 9.

The Participants will remit purchase orders or independent contracts directly to the vendor(s) awarded the bids.

The Participants agree to abide by all terms and conditions of this Agreement.

Participants agree to promptly submit payment for all billings from the Cooperative as set out in Article 6 below.

Participants agree that they 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.

The Participants agree to appoint a program coordinator who shall have express authority to bind the Cooperative Member and the Cooperative will not be required to contact any other

individual regarding cooperative 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.

The Participants warrant that all payments, fees and disbursements required of them hereunder shall be made from current revenues budgeted and available to the Cooperative Member.

The Participants authorize the cooperative to regulate the commencement, defense, intervention or participation in a judicial, administrative, or other governmental proceeding or in a mediation or other appearance of the Cooperative in any litigation, claim or dispute which arises from the services provided by the 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 Cooperative to provide a defense or prosecute a claim; rather, the Cooperative may exercise this right in its sole discretion and to the extent permitted or authorized by law. The Cooperative Member shall reasonably cooperate and supply any information necessary 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.

The Participants agree to the submission of disputes arising under this Agreement to the alternative dispute resolution procedures authorized by Chapter 2009 of the Texas Government Code.

ARTICLE 6: Billings

Billings will be generated from the Child Nutrition Products and Services purchased and based upon the Vendor Fee of 0.50% of total purchases of all Participating Districts to be paid by the contracted vendors to NCISD. This fee will be used to pay all administrative costs, legal fees and expenses associated with this Agreement. From the Vendor Fee, NCISD will receive an annual administrative fee of \$30,000 for activities performed to carry out the functions of this Agreement as stated in Article 4. This administrative fee will be reviewed annually by NCISD's Board of Trustees and may increase as the number of participating districts increase, solely at the discretion of the NCISD Board of Trustees. In the event that any changes are made to the amount of the administrative fee, such changes will be communicated to the Participants in writing no less than thirty (30) calendar days prior to the effective date of the new amount.

Participants agree that any additional expenses incurred beyond the amount of the Vendor Fee will be borne by all Participating Districts and will be split pro-rata based on the percentage of total purchases by each Participating District.

Participants agree that any remaining monies will accumulate in a fund balance until the amount reaches a level sufficient to cover all operating expenses for one fiscal year, at which time Participants agree that the excess funds will be refunded back to the Participating Districts with the amount split pro-rata based on the percentage of total purchases of each Participating District.

ARTICLE 7: Product Selection Committee

The Product Selection Committee will be comprised of one food service director, hereafter referred to as "committee member", from each Participating District including NCISD.

The Product Selection Committee will be responsible for selecting the bid items and each committee member will be given one vote per item selection. Products will be voted on based on taste, quality of ingredients, appearance of the product, and cost. All product committee members will be invited to attend tastings for products. Only those product committee members in attendance at the tastings will be eligible to vote for the products. The majority of votes cast for each item will determine the selection. In the case of a tie, the NCISD committee member will cast an additional vote to break the tie.

ARTICLE 8: Contracted Services

Participants agree that NCISD has the right to contract with an outside vendor ("Contractor") for bidding services including procurement management, product management and website management services ("Contractor Services"). The Contractor will provide Contractor Services in accordance to any and all applicable policies, regulations, state and/or federal laws governing the Participants of this Agreement. The contract fee ("Contractor Fee") paid to Contractor will be paid from the Vendor Fee referred to in Article 6 above. The amount of the Contractor Fee may be released to Participants upon written request to NCISD. In the event that NCISD decides to change Contractors, NCISD will notify Participants of the change in writing no less than thirty (30) calendar days from the start date of the new Contractor.

ARTICLE 9: Letter of Commitment ("Exhibit A") AND DEADLINE TO JOIN

Participants must complete the Letter of Commitment, hereafter referred to as "Exhibit A", and return it fully completed to NCISD on or before January 31, 2019 to participate in this cooperative purchasing arrangement for the 2018-2019 school year. Exhibit A is an integral part of this Agreement and this interlocal cooperative purchasing agreement is not complete or valid without it.

ARTICLE 10: Term

Notwithstanding anything to the contrary, this Agreement is contingent upon Board of Trustees of the Participating District's approved resolution authorizing Participants to enter into the Interlocal Agreement and NCISD receiving sufficient payments. In the event NCISD does not receive sufficient payments, NCISD may terminate this Agreement or reduce the scope of services provided under this Agreement without pecuniary risk or penalty, at its sole discretion.

Participants understand that the minimum commitment will be for a period of one year, and Participants cannot terminate this agreement within the first year. This agreement shall be renewable for successive one year periods by agreement of the parties.

Additional Participants may be added by NCISD, at its sole discretion, so long as such addition is prior to the commencement of contract services with the vendor for the immediate next school year.

Either party may terminate this agreement at the end of the first year or any subsequent one-year period by giving thirty (30) days written notice to the other party, provided all amounts owed to the Cooperative and any vendor have been fully paid. If the Cooperative Member

terminates its participation under this Agreement or breaches this Agreement, the Cooperative Member shall bear the full financial responsibility for all of its purchases made from vendors under or through this Agreement. The Cooperative may seek the whole amount due, if any, from the terminated Cooperative Member. In addition, the Cooperative Member agrees it will neither be entitled to any distribution or pro-rata refund as described in Article 6 above.

ARTICLE 11: Assignment

Neither this Agreement nor any duties or obligations entered in subsequent contracts because of this Agreement shall be assignable by either party without the prior written acknowledgment and authorization of both parties.

ARTICLE 12: Contract Amendment

This interlocal cooperation agreement may be modified only by written agreement signed by the authorized representatives of each party and by the written resolution approving the modification adopted by each party.

ARTICLE 13: Hold Harmless

Participants shall protect and hold harmless NCISD from any and all loss, claims, assessments, and suits in law or in equity, expenses, attorney's fees, and damages arising from Participants' actual or alleged violation in connection with this Agreement to the extent permitted by law.

ARTICLE 14: Jurisdiction and Venue

This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable, and mandatory and exclusive venue in any action arising out of this Agreement shall be in Montgomery County, Texas.

ARTICLE 15: Miscellaneous

In the event any party breaches any of the terms of this Agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorneys' fees so incurred by such other party.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

It is expressly understood and agreed that, in the execution of this agreement, no party waives, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this agreement shall not create any rights in parties not signatories hereto.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE 16: Disclaimer.

THE NCISD DOES NOT WARRANT THAT THE OPERATION OR USE OF THE COOPERATIVE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. THE NCISD HEREBY DISCLAIMS 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.

ARTICLE 17: Limitation of Liability

Without waiver of the disclaimer or other limitation of liability in this Agreement, the parties agree that: (a) Neither party waives any immunity from suit or 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 party 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 Cooperative received as a direct result of the Vendor Fee purchase activity, within twenty-four (24) months of when the lawsuit or action was filed; and (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.

ARTICLE 18: 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.

ARTICLE 19: Notices

Any written notice to the Cooperative shall be made by first class mail, postage prepaid, return receipt requested, delivered to: NCISD: SCHOOL PURCHASING ALLIANCE, 21580 Loop 494, New Caney, TX 77357. Notices to Cooperative Members may be made by first class mail, postage prepaid, return receipt requested, and delivered to the Cooperative Member's Coordinator or Superintendent.

The parties hereby have executed this Agreement in multiple original counterparts on this the 12 day of November, 2018.

THE NEW CANEY INDEPENDENT SCHOOL DISTRICT

BY: 
KENN FRANKLIN, Superintendent

PARTICIPATING MEMBER:

Name: _____

Address: _____

BY: _____
Signature and Title

TO BE COMPLETED BY COOPERATIVE MEMBER:

Coordinator for the Cooperative Member is:

Name: _____

Title: _____

Mailing Address: _____

Telephone: _____

Fax: _____

Email: _____

A RESOLUTION BY THE BOARD OF TRUSTEES
AUTHORIZING AND APPROVING
AN INTERLOCAL COOPERATIVE PURCHASING AGREEMENT
BETWEEN THE NEW CANEY INDEPENDENT SCHOOL DISTRICT
AND OTHER PARTICIPATING DISTRICTS

On this day came on to be considered by the Board of Trustees of the College Station Independent School District (hereinafter referred to as a "Participating District") the matter of a proposed Interlocal Cooperative Purchasing program to be formed, developed and administered by the New Caney Independent School District and other participating districts; and

WHEREAS, the Participating District 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;

WHEREAS, the Board of Trustees is of the opinion that participation in the Cooperative's purchasing program will be highly beneficial to the taxpayers of the district through the efficiencies and potential savings to be realized; and

The Board of Trustees desire to approve the Interlocal Cooperative Purchasing Agreement to be entered into by and between the Participating District and other participating districts;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE PARTICIPATING DISTRICT, AS FOLLOWS:

1. The Board of Trustees hereby give specific written approval for the Participating District to participate in and join the cooperative purchasing program; and

2. That the Board of Trustees authorizes its Board President, Superintendent or other officer to execute the Interlocal Participation Agreement which includes the adoption and approval of the organizational Interlocal Cooperative Agreement.

3. That the execution of this Resolution shall evidence the election of the Participating District to become members of the Cooperative upon the terms and conditions stated in the Cooperative Agreement.

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.

EXECUTED this the 18 day of December, 2018

ATTEST:

Mike Nugent, Secretary, Board of Trustees
Participating District

Jeff Harris, President, Board of Trustees
Participating District