

# Constitution and By-Laws of the The Ohio Purchasing Council

## Preamble.

WHEREAS the Boards of the **Patrick Henry Local School District** and the **Greeneview Local School District** have entered into an agreement establishing a Regional Council of Governments (COG) pursuant to Ohio Revised Code 167.

NOW, THEREFORE, the following provisions, having been duly adopted and amended by the Founding Members, shall constitute the By-Laws of the Ohio Public Purchasing Council.

## **Article I. Name.**

The name of this Regional Council of Government shall be The Ohio Purchasing Council, hereinafter referred to as the "Council."

## **Article II. Purpose.**

The purpose of the Council is to undertake functions and duties as may be permitted under Ohio Revised Code Section 167.03 and Chapters 3311 and 3313 of the Ohio Revised Code. The mission of the Council is to pool resources and bargaining power to obtain quality merchandise and services commonly used by school districts, special districts, or other political subdivisions and to serve as a resource to members on matters related to facility capital expenditures.

## **Article III. Powers.**

**Section 3.01** The Council shall act as comprehensive planning center and bargaining consortium for the procurement of services and materials for school districts, special districts, and other political subdivisions. The Council shall have and exercise all powers conferred by federal, state, and local law, regulations, ordinances, and statutes, including all such powers conferred on its members by the same.

## **Article IV. Membership.**

**Section 4.01** Founding Members. The founding members are Patrick Henry Local School District and Greeneview Local School District.

**Section 4.02** Members. Membership shall be open to any governing bodies statutorily permitted to belong to a regional council of government located in the state of Ohio, including special districts, school districts or other political subdivisions. Such members, including Founding Members, shall have equal voting rights and privileges for all matters.

**Section 4.03** Additional Members

- (a)** FULL MEMBERS - Upon majority vote of acceptance by the Council Board of Directors or upon majority vote of the Officer Committee, any organization that meets the requirement of Article IV Section 4.02 and
  - (i) Agrees to the By-Laws herein.
  - (ii) Appoints an authorized representative who can vote on issues permitted by Member privileges. From time to time, this representative can change.
  - (iii) Has not withdrawn as a Member within the preceding ninety days.

- (b) INTERIM MEMBERS – Upon acceptance by any Officer, any organization that meets the requirement of Article IV Section 4.02 and
- (i) Agrees to the By-Laws herein.
  - (ii) Appoints an authorized representative who can vote on issues permitted by Member privileges. From time to time, this representative can change.
  - (iii) Has not withdrawn as a Member within the preceding ninety days.
  - (iv) Agrees to be responsible for payment of such fees as determined by the Council pursuant to Section 6.02 of these By-Laws.
  - (v) The organization has not previously been denied membership in a vote of the Board of Directors.

An Interim Member shall have all rights of a full or founding members except for the right of representation on the Board of Directors. An organization may be an Interim Member for no more than one year. If within one year of becoming an Interim Member, the Board of Directors has not admitted the Interim Member as a full Member, the Interim Membership will expire. If the Board of Directors votes and elects not to admit an Interim Member as a Member, the organization cannot become a Member without approval from the Board of Directors, however, nothing shall prohibit an Interim Member whose membership expires from immediately becoming an Interim Member upon expiration, with approval of an Officer.

- (c) COOPERATIVE MEMBERS – Any organization, upon
- (i) Agreeing to the Online Membership Agreement
- shall be accepted as a Cooperative Member.

This membership status creates an interlocal purchasing agreement between an organization and the Council to participate in the Council's unit priced contract services. Cooperative Members are members only by way of an interlocal purchasing agreement and do not have voting rights or a position on the Board of Directors.

Cooperative Members do not need to be located in Ohio. Organizations in Ohio that have joined as a Cooperative Member will operate under Ohio Revised Code 9.48 and not Ohio Revised Code 167.081 for procurement.

#### Section 4.04 Withdrawal from Membership.

Any Member who is financially in good standing with the Council may withdraw from the Council by formal action of its Board and upon submittal of ninety days written notice to the Board of Directors. For withdrawal less than ninety days written notice, a two thirds majority vote of acceptance by the Council Board of Directors is required and the Fiscal Officer must certify the member is financially in good standing with the Council. Upon the effective date of withdrawal, such members shall be released from all obligations and liabilities with the exception of:

- (i) Those obligations and liabilities stemming from contractual agreements when individuals from the withdrawing member are receiving benefits from the contract or when the withdrawing member is a party to a contract
- (ii) Obligations and liabilities stemming from contractual or other arrangements between the withdrawing member and the Council
- (iii) Claims pending against the Council at the time of withdrawal
- (iv) Claims arising after withdrawal, but based on events occurring prior to withdrawal.

The withdrawing member shall receive a return of its tangible property that can be clearly and reasonably determined to be that of such former member and loaned to the Council. The withdrawing member shall receive its share of unexpended allocations, pursuant to these By-Laws. Any and all other monies shall remain that of the Council.

## **Article V. Board of Directors and Officers.**

### **Section 5.01 Board of Directors.**

The business and governance of the Council shall be managed by the Directors. Each member shall be responsible appointing no less than one representative as a Director. The Board Directors shall consist of one representative of each Member, but no less than two directors. In the event there are fewer than two members, the Board shall consist of two representatives from each member. The Board of Directors has all of the powers and authority vested in Regional Council of Government by Ohio Revised Code 167. The Board of Directors may delegate any of these powers and authority to the Officers. Members of the Board of Directors shall meet, from time to time as necessary to conduct regular business but shall meet no less than annually.

**Section 5.02** Director meetings can be called by any member of the Board of Directors, the President of the Council, or the Council's Fiscal Officer. Pursuant to Ohio Revised Code 121.22, the meetings shall be open to the public, subject to the exceptions contained in ORC 121.22(G). The Board of Directors may determine the time and place of the meetings; the Directors may physically attend, or in lieu of physically attendance may attend through digital technology that allows them to be seen and heard by all other Directors and other participants in attendance, as well as hear all such other Directors and other participants in attendance. The President of the Council shall preside at all meetings, or in his/her absence, the First Vice-President.

**Section 5.03** Members shall be notified of a meeting a minimum of five days before the meeting by either telephone, electronic notification, or by mail. A meeting location and time shall also published a minimum of five calendar days before the meeting and shall be considered effective notice on any Director that could not be otherwise notified. Meetings shall be conducted in a customary and orderly manner. A meeting cannot be called more than one time every twenty-eight days, unless:

- (i) The greater of two members of the Board of Directors or twenty one percent of the Board of Directors together call another meeting.
- (ii) The President or Fiscal Officer calls the meeting to discuss a matter that, in the sole determination of the President or Fiscal Officer, has urgency.

### **Section 5.04 Quorum.**

A majority of Directors at a Meeting of the Council shall constitute a quorum.

### **Section 5.05 Voting.**

Except as otherwise provided in these By-Laws, a majority vote of those present and eligible to vote on the issue under consideration at a meeting is required to approve any action.

**Section 5.06 Ethics.** The provisions of Ohio Revised Code Chapter 102, and the related provisions of ORC. Sections 2921.42 and 2921.43 are applicable to all Directors. Directors and Officers who are not otherwise required to file the financial disclosure statement mandated by O.R.C. Sections 102.02, 102.021, and 102.022 shall not be required to file such a statement solely as a result as their appointment to office with this Council. Except as otherwise provided by the ORC and Ohio law, appointment as a Director or Officer shall constitute the holding of public office within the meaning of ORC Chapter 102, or Section 2921.42.

**Section 5.07 Compensation.** A Director shall not receive compensation for his/her service as a Director, except as reimbursement for reasonable expenses incurred upon the approval of such reimbursement by a majority of disinterested Directors.

**Section 5.08 Removal and Vacancy.** A Director may be removed from office only upon a supermajority (75% or more) vote of the Board. Upon removal, the member who appointed will, no less than 45 days following the removal, appoint a different representative to serve as a director. Any vacancy on the Board of Directors due to reasons other than removal shall be filled by the member lacking representation on the Board no less than 90 days from the date of vacancy.

Section 5.09 Officers.

- (a) The Officers of the Council shall be President, Secretary, Fiscal Officer/Treasurer, and at least one Vice-President.
- (b) Officers shall be elected annually by the Board of Directors at a meeting for a one-year term and can be re-elected for succeeding terms. An officer may be removed upon a majority vote of the Board of Directors. An officer may resign at any time, without advance notice.
- (c) Persons seeking or holding Officer positions need not be associated with a Member organization or on the Board of Directors to qualify, with the exception of the Fiscal Officer, who must be a member of the Board of Directors.
- (d) Pursuant to Ohio Revised Code 167.04(B), the Board of Directors position of Fiscal Officer shall not remain unfilled. If the Fiscal Officer resigns from the position before the end of the elected term, the Board of Directors shall call a meeting, within one calendar month, to vote for a new Fiscal Officer. The President, Vice-President and Secretary Officer position may remain unfilled if impractical for the Board of Directors to fill the positions, until a later time where it becomes practical.

Section 5.10 Duties of the Officers.

- (a) The President shall:
  - (i) Preside at all Meetings.
  - (ii) Develop and oversee the management of unit priced contracts as defined in Ohio Revised Code 167.081 to further the Mission of the Council.
  - (iii) Promote cooperative arrangements and coordinate action among Members and other Ohio agencies.
  - (iv) Hire staff and contract for services of consultants and experts within budget parameters.
  - (v) Purchase and/or lease supplies, material, equipment and facilities deemed necessary and appropriate to carry out business.
  - (vi) Approve expenditures and enter into contracts on behalf of the Council in accordance with budgets approved by the Board of Directors.
  - (vii) Act on behalf of the Council in situations, determined jointly by the President and Fiscal Officer, as necessary in order to act in a timely manner and be responsive to the best interest of the Council. Such actions shall be reported to the Board of Directors at the next meeting.
  - (viii) Perform functions and duties as are necessary for dealing with problems of mutual concern.
  - (ix) Review any conflicts of interest that are disclosed, keep record of the potential conflict, and develop a system to handle the conflict in a reasonable manner such not to restrict a Member, partner, service provider or employee, instead to make potentially affected parties aware of such conflict and the parties can mutually decide, without the recommendation of the Council, if they choose to proceed with the interaction.
  - (x) Act as the Secretary if there is no Secretary, pursuant to Article V Section 5.02(d) of these By-Laws.
- (b) The First Vice-President shall:
  - (i) Have the authority to act on behalf of the President in the event the President is unavailable or unreachable and the matter needs to be addressed before the President becomes available.
  - (ii) Oversee new membership and conduct outreach.
- (c) Any additional Vice-Presidents shall have such authority as the Board of Directors determines and sets forth in the minutes of a regularly conducted meeting.
- (d) The Fiscal Officer shall:
  - (i) Open and maintain a bank account. The Fiscal Officer SHALL NOT, without operating under the guidance of legal counsel, invest any money in an interest bearing account or in any investment which provides a monetary return on the investment.
  - (ii) Hire staff and contract for services of consultants and experts within budget parameters.
  - (iii) Purchase and/or lease supplies, material, equipment and facilities deemed necessary and appropriate to carry out business.
  - (iv) Approve expenditures and enter into contracts on behalf of the Council in accordance with budgets approved by the Board of Directors.

- (v) Act on behalf of the Council in situations, determined by the Fiscal Officer, as necessary in order to act in a timely manner and be responsive to the best interest of the Council. Such actions shall be reported to the Board of Directors at the next meeting.
- (vi) Perform functions and duties as are necessary for dealing with problems of mutual concern.
- (vii) Provide annual reporting of activities to Members, pursuant to Ohio Revised Code 167.06(D).
- (viii) Consult legal counsel before an Officer Committee enacts any matters, as permitted in Ohio Revised Codes 167.10 and 167.101 through 167.105, which may be contemplated.
- (ix) Act as the President, if the Board of Directors has not filled the President and Vice President positions.
- (e) The Secretary shall:
  - (i) Circulate notice of Meetings, as defined in Section 4.07 of the By-Laws herein.
  - (ii) Record and distribute Meeting minutes.
  - (iii) Provide current copies of the By-Laws to the auditor of state, pursuant to Ohio Revised Code 167.04(D).

**Section 5.11 Officer Committee.**

The Officers, as defined in Section 5.10, shall together form an Officer Committee. From time-to-time, Officers can choose to call an Officer Committee meeting to discuss and hold a vote on such issues determined to be the province of an Officer Committee. These votes may be reported to members at meetings or published electronically on the Internet.

**Section 5.12 Compensation.** Officers may only receive such compensation as the Board of Directors determines. No Director who serves as an Officer may receive compensation from the Council except as permitted by Section 5.07 of these By-Laws.

**Article VI. Financial Matters.**

**Section 6.01 Financial Support.**

The Council shall not charge Members or Founding Members a fee for the privilege of being a Member that is due on regular intervals. Financial support for the Council shall be based on, but not limited to:

- (i) Grants: The Board of Directors or Officers may actively pursue, apply and accept any and all available grants.
- (ii) Fees from Member Services: The Officers will set and collect reasonable fees for Member Services, determined prior to offering of any services.
- (iii) Donations and Contributions: Individual, business, community and private agency contributions will be requested and accepted when available. The President shall be responsible for distributing a disclosure of conflicts of interest that may arise.
- (iv) Allocations: Funds or allocations received from local, state or federal sources, whether as a reimbursement or as a grant.

**Section 6.02 Budget.**

The Board of Directors shall pass a Budget which shall bind the Council. The budget may be amended at any time by the Board of Directors by majority vote as the Directors deem advisable. A budget must establish the amount necessary to provide for the administration and continued operation of the Council for the next twelve months. Member services for particular projects may be incorporated into the annual budget or by the Board as deemed necessary.

**Section 6.03 Budget Limitations**

Excepting those assessments determined by the Board of Directors necessary for the administration and continued operation of the Council, Fees from Member Services to Full Members or Interim Members shall not exceed two and one quarter percent of the total cost of any Per Unit Contract.

**Section 6.04 Transfer of Funds.**

When paying for Member Services, a Member shall pay the Council for Member Services a minimum of ten days before a

contractor invoice is due. The Council shall not accept or retain any funds from Members (excepting those assessments determined by the Board of Directors necessary for the administration and continued operation of the Council) for any purpose other than payment for services which have been, or are expected to be, provided in accordance with a contract between the Member and the Council or a contract between the Member and a contractor who has been awarded a Unit Price Contract by the Council.

Section 6.05 GIFTS, GRANTS, AND BEQUESTS

The Council is duly appreciative of public interest in and good will toward the schools manifested through gifts, grants, and bequests. The Board of Directors reserves the right, however, to specify the manner in which gifts are made; to define the type of gift, grant, or bequest which it considers appropriate; and to reject those which it deems inappropriate or unsuitable.

All gifts, grants, or bequests shall be submitted to the Board, and if accepted, acknowledged by the Board.

Gifts, grants, and bequests shall become the property of the Board and will be subject to use by the District as determined by the policies and administrative guidelines applying to all properties, equipment, materials, and funds owned by the Board

**Article VII. Amendment Process.**

The By-Laws of the Council may be amended at any regular or special meetings of the Board of Directors at which a quorum is present.

**Article VIII. Dissolution of the Council.**

Section 8.01 The Council may be dissolved by a resolution from no less than two thirds of all Members or a majority of no less than two thirds vote of Directors.

Section 8.02 If the Council is in a situation where the Officers cannot run the day-to-day business under the approved budget, the President shall provide thirty days' notice to all directors a new budget which provides adequate funding for the Council to conduct day to day business must be approved. If no budget is approved within thirty days of receipt of the President's notice, a Dissolution Event has occurred.

Section 8.03 If a Dissolution Event occurs, the Board of Directors shall immediately cease to do business and shall only do such acts as are required to conclude its affairs. Member Services contracts shall be completed. Officers shall direct all pending business until all the Council affairs are concluded.

Section 8.04 Distribution of Assets: At the conclusion of all of the Council affairs, any unclaimed assets remaining on the books shall be distributed according to the following schedule:

Section 8.05 All tangible personal property previously loaned or given to the Council that is clearly identified as to ownership shall be returned.

Section 8.06 All remaining tangible property shall be sold at public sale in accordance with Ohio Revised Code 307.12 and proceeds divided among members after all liabilities, if any, have been satisfied.

Section 8.07 Monies from federal, state and local sources for services that are not provided and will not be provided by the dissolution date will be returned.

Section 8.08 All remaining assets and other intangibles shall be divided among all members after all liabilities, if any, have been satisfied.

**Article IX. Indemnity.**

Section 9.01 Any person who by reason of that person's service as a director, officer, employee, or agent of this Council, against whom a claim is made or was or is a party or threatened to be made a party to any threatened, pending, or completed claim, suit, or proceeding, whether civil, criminal, administrative, or investigative, other than a claim asserted by this Council itself, shall be indemnified by this Council for expenses, judgments, fines, and amounts paid in settlement incurred in connection to such action, suit, or proceeding so long as in the determination of all directors not seeking such indemnity, the person acted in good faith and in a manner the person with good cause reasonably believed to be in the best interest of the Council. Any such indemnification shall be made by the Council only as authorized by the Board by majority vote of the disinterested directors (any director currently or imminently seeking indemnification shall be considered interested directors and ineligible to vote on indemnification matters until such time as the contemplated or pending claim is resolved and the director has either waived indemnification or the disinterested directors have already approved and paid such indemnification). No person shall seek indemnification for a disposed claim if during the period the claim was contemplated and/or pending, the person did not seek indemnification and instead participated/defended against the claim without prior consideration of the Board of Directors.

**Article X. Miscellaneous.**

Section 10.01 Application of Ohio Law These Amended By-Laws and the interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Ohio.

Section 10.02 Headings The headings in these By-Laws are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement, or provision hereof.

Section 10.03 Waivers Failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of these By-Laws shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

Severability If any provision of these By-Laws of the application thereof shall be invalid, illegal, or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.