

AN ORDINANCE 2019-11-07-0918

APPROVING AN AGREEMENT WITH THE RESIDENTIAL ENERGY ASSISTANCE PARTNERSHIP, INC. (REAP) FOR THE ISSUANCE OF UTILITY ASSISTANCE CREDITS IN A PROJECTED AMOUNT OF \$800,000.00 THROUGH 2020, WITH TWO ANNUAL RENEWALS, AND APPROVING AN AMENDMENT TO AN AGREEMENT WITH KINETECH CLOUD, LLC TO HOST AND MAINTAIN AN EMERGENCY UTILITY BILL ASSISTANCE SOFTWARE APPLICATION TO ELECTRONICALLY PROCESS UP TO 30,000 APPLICATIONS AT A COST OF \$36,250.00 ANNUALLY, AND TO PROVIDE ENHANCEMENTS TO THE ELECTRONIC APPLICATION PROCESS AS REQUESTED BY THE DEPARTMENT OF HUMAN SERVICES.

* * * * *

WHEREAS, in 2002, the City of San Antonio, Bexar County, and CPS Energy established REAP as a method to help local economically disadvantaged families in need of utility assistance; and

WHEREAS, specifically, REAP provides direct utility bill credits to income qualifying CPS Energy customers living within the City of San Antonio and Bexar County; and

WHEREAS, REAP funds are raised locally, financed by donations from CPS Energy customers and trust investment income; and

WHEREAS, CPS provides \$800,000 annually to the City of San Antonio Department of Human Services for the REAP utility assistance program; and

WHEREAS, in addition to the \$800,000, the City may request additional disbursement of funds from the REAP corpus; and

WHEREAS, the current estimated balance of the corpus is \$3.2 million; and

WHEREAS, during calendar year 2019, an additional \$1 million has been transferred from the corpus, and \$2.2 million in credits have been utilized overall to provide assistance to CPS customers; and

WHEREAS, area residents can utilize an electronic application developed by Kinetech Cloud, LLC to apply for the utility assistance and upload the required income and energy bill documentation using a scanner or smart phone camera; and

WHEREAS, Community Services Specialists are funded through the City's general fund to support CPS bill assistance to determine program eligibility; and

WHEREAS, eligible participants must be at or below 125% of the federal poverty guidelines (\$32,188 annually for a family of four), and may receive up to \$400.00 in credits per year for REAP; and

WHEREAS, through these credits, DHS anticipates providing CPS utility assistance through REAP to 9,000 households during 2019; and

WHEREAS, in 2018 the Department of Human Services entered into an agreement with Kinetech Cloud, LLC to create, host and maintain a mobile phone based DHS utility service software application that has improved the ability of area residents to electronically apply for emergency utility bill assistance; and

WHEREAS, by using their desktop computers, and mobile devices such as smart phones and tablets, residents can now easily apply for assistance and utilize their phone's camera to upload the required identification, income and account documentation; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee, or the Director of the Department of Human Services, or her designee is hereby authorized to execute an agreement with the Residential Energy Assistance Partnership, Inc. for the issuance of utility assistance credits in a projected amount of \$800,000.00 through calendar year 2020, with two annual renewals through calendar year 2022, for the Residential Energy Assistance Partnership (REAP) utility assistance program. A copy of the agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. The City Manager or her designee, or the Director of the Department of Human Services, or her designee is hereby authorized to execute an amendment to an agreement with Kinetech Cloud, LLC to host and maintain an emergency utility bill assistance software application to electronically process up to 30,000 applications at a cost of \$36,250.00 annually, and to provide enhancements to the electronic application process as requested by the Department of Human Services. A copy of the amendment to the agreement with Kinetech Cloud, LLC, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachments II**.

SECTION 3. Funding in the amount of \$56,250.00 for this ordinance is available in Fund 11001000, Cost Center 3801030101 and General Ledger 5202025 as part of the Fiscal Year 2020 budget. Payment not to exceed the budgeted amount is authorized to Kinetech Cloud, LLC to host and maintain an emergency utility bill assistance application and to provide enhancements to the application software as requested.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP

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Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

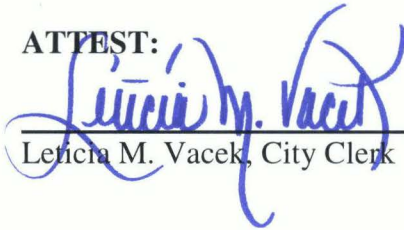
PASSED AND APPROVED this 7th day of November, 2019.



M A Y O R


Ron Nirenburg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


for

Andrew Segovia, City Attorney

Agenda Item:	26 (in consent vote: 5, 6, 7, 8, 9, 10A, 10B, 10C, 10D, 10E, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29)
Date:	11/07/2019
Time:	09:42:59 AM
Vote Type:	Motion to Approve
Description:	Ordinance approving an agreement with the Residential Energy Assistance Partnership, Inc. (REAP) for the issuance of utility assistance credits in a projected amount of \$800,000.00 through 2020, with two annual renewals, and approving an amendment to an agreement with Kinetech Cloud, LLC to host and maintain an emergency utility bill assistance software application to electronically process up to 30,000 applications at a cost of \$36,250 annually, and to provide enhancements to the electronic application process as requested by the Department of Human Services. [Colleen M. Bridger, MPH, PhD, Assistant City Manager; Melody Woosley, Director, Human Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				
Jada Andrews-Sullivan	District 2		x			x	
Rebecca Viagran	District 3		x				
Adriana Rocha Garcia	District 4		x				
Shirley Gonzales	District 5	x					
Melissa Cabello Havrda	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				x
Clayton H. Perry	District 10		x				

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ATTACHMENT I

**AGREEMENT FOR REAP CONTRIBUTION AND SERVICES BETWEEN
THE CITY OF SAN ANTONIO**

AND

RESIDENTIAL ENERGY ASSISTANCE PARTNERSHIP, INC.

This "Agreement," effective as of January 1, 2019 (the "Effective Date"), is entered into by and between the City of San Antonio, a Texas municipal corporation (hereinafter referred to as the "City"), acting by and through its Director of the Department of Human Services, and the Residential Energy Assistance Partnership, Inc. (hereinafter referred to as "REAP").

RECITALS

WHEREAS, REAP is a Texas non-profit corporation organized for IRC §501(c)(3) charitable purposes; and

WHEREAS, REAP's charitable purposes are to provide funds to: 1) help low-income individuals and families in the City of San Antonio and elsewhere in Bexar County pay their gas and electric utility bills; 2) help individuals in the City of San Antonio and elsewhere in Bexar County who have significantly decreased abilities to regulate their core body temperatures due to severe burns received during the course and scope of performing duties of a law enforcement officer or firefighter (Eligible First Responders) pay their gas and electric utility bills; and 3) provide funds to help low-income individuals and families in the City and elsewhere in Bexar County cover the costs of purchase, installation, operation and maintenance of products targeting or promoting energy efficiency, safety or security ("Eligible Products"), including solar security lights (individually and collectively referred to as the "Charitable Purpose"); and

WHEREAS, the City's Department of Human Services (DHS) social service staff will serve as the principal conduit for the distribution of REAP assistance energy credits for the Charitable Purpose to eligible City residents (the "City Program"); and

WHEREAS, it is now the desire of the City and REAP to set forth their respective duties and responsibilities in connection with the administration of REAP's Charitable Purpose to eligible residential customers of CPS Energy, the municipally-owned utility which provides electric and gas services within the City of San Antonio and elsewhere in Bexar County, who reside within the established boundaries of the City for the City of San Antonio (the "Covered City Area"); and

WHEREAS, the public purpose of this Agreement is to promote the health of individuals and families living in the Covered City Area.

NOW THEREFORE:

The parties hereto severally and collectively agree and by the execution hereof are bound to the mutual obligations herein contained and the performance and accomplishment of the tasks hereafter described.

1. TERM

1.1. The initial term of this Agreement shall commence on the Effective Date and terminate December 31, 2020 (the "Initial Term"). Unless terminated under Section 6 of this Agreement, this Agreement shall automatically be renewed for up to two (2) successive annual terms (each, a "Renewal Term" and collectively, the "Renewal Terms"), consisting of the calendar years 2021 and 2022, with the Renewal Terms ending on December 31, 2021 and December 31, 2022, respectively. The Renewal Terms, along with the Initial Term, shall be collectively referred to herein as the "Term."

2. REAP RESPONSIBILITIES

2.1. REAP collects and invests charitable donations for its Charitable Purpose which it solicits from a variety of sources. During the Initial Term and each Renewal Term, REAP shall provide a total of \$1,000,000 annually out of such donations and payments made by CPS Energy (the "Aggregate Annual Contribution") in the form of either assistance energy credits applied directly against CPS Energy customer accounts or funds to reimburse CPS Energy for Eligible Products ("Reimbursement Funds") to (a) the City Program for the benefit of CPS Energy's eligible gas or electric residential service customers who are then-currently residing within the Covered City Area, and (b) any substantially similar program maintained by Bexar County for the Charitable Purpose (the "County Program") for the benefit of CPS Energy's eligible gas or electric residential service customers who reside within the corporate boundaries for Bexar County but outside of the Covered City Area (the "Covered County Area").

2.1.1. The percentage of the Aggregate Annual Contribution to be allocated to the City Program, as such may be modified from time to time in accordance with Section 2.6, is called the "City Percentage". As of the Effective Date, the City Percentage is 80%.

2.1.2. Based on the City Percentage, the formula for determining the amount to be given out of the Aggregate Annual Contribution to the City Program during the Initial Term and the Renewal Term is as follows: the Aggregate Annual Contribution, minus REAP's annual administrative costs (such as bank, fund management & investment fees) as determined and overseen by REAP's Board of Directors, multiplied by the City Percentage.

Example Net Contribution Calculation, Reduced for the Program's Administrative Fees: If, for example, REAP's annual administrative spend is \$25,000, and the City Percentage is applied, REAP will provide \$780,000 (i.e., $0.80 \times [\$1,000,000 - \$25,000]$) per year in assistance energy credits or Reimbursement Funds to the City Program for eligible CPS Energy residential customers residing in the Covered City Area during the Initial Term and each Renewal Term.

2.2. If additional funds are needed and are available in any given year, City may submit a request in a form substantially similar to the attached Appendix A to REAP for additional credits or Reimbursement Funds and REAP may allocate to the City additional credits or Reimbursement Funds, provided that the City has the capacity to administer the additional funds.

2.3. REAP will also provide assistance energy credits to eligible CPS Energy residential customers residing within the Covered City Area or Reimbursement Funds on an annual basis in an amount equal to the City Percentage, multiplied by the total of the following two (2) amounts:

- a. Contributions to REAP made in the calendar year by CPS Energy residential customers via their monthly CPS Energy bills; and
- b. Net proceeds in the calendar year from other fund-raising activities of REAP, such as golf tournaments.

2.4 Notwithstanding the terms and provisions set forth in Subsection 2.1.2, above, the formula contained in that subsection shall not include donations of funds specifically earmarked for endowment or other charitable purposes. (For example, the City once made an additional, discretionary contribution to REAP from the City's own General Fund. That payment was directed by the City to be used for its own eligible residents; therefore, no allocation percentage, as noted in Section 2.1, above, was applied to that contribution. Accordingly, any contributions or donations made to REAP, which are in excess of the Aggregate Annual Contribution will be based upon the terms of the endowment.

2.5 The City understands the City and/or the County may not utilize its respective annual allocation(s) by the end of a particular year during the Term, or by the end of the Term. REAP shall keep track and reserve for the City's later use (i.e., "rollover") any unused portion of its annual allocation which was previously determined to be the City's share. Provided the parties agree in writing, which agreement shall not be unreasonably withheld or delayed, to continue providing their respective services in contemplation of a new, comprehensive agreement, the obligation to reserve and rollover the City's unused annual allocation for City's later use shall survive expiration of this Agreement. The City reserves the right to request from REAP, and REAP shall provide within a reasonable time after the request is made, an accounting regarding the amounts REAP originally allocated and the amounts kept in reserve for the City and/or the County.

2.6 The City may submit a request for a new allocation percentage at any time to replace the then-current City Percentage. In order to do so, the City must send a formal, written notification, with support, to REAP which must evidence that the new allocation percentage has been reviewed and discussed by authorized representatives for both the County and the City. The REAP Board will review the request, staff's recommendation and approve any change in allocation. REAP will update the City and County percentages within a reasonable time period, not to exceed 90 days after receipt of a proper notice.

2.7 REAP agrees to make charitable assistance energy credits or provide Reimbursement Funds for the Charitable Purpose toward eligible CPS Energy customers who reside within the Covered City Area by coordinating the crediting of their accounts or providing Reimbursement Funds up to the maximum amount allowable in accordance with the current year Utility Assistance Program Criteria, which have been previously approved in writing by both the City and REAP. Waivers may be granted on a case-by-case basis at DHS' discretion. The criteria for 2019 – 2020 is attached to this Agreement as Appendix B, and may be renegotiated for each of the Renewal Terms and made a part of this Agreement with the written approval of both parties; provided, however, that approval by each of the respective governing bodies is not necessary, if staff for both parties find and document in writing that the revised criteria are in the best interest of eligible City residents and satisfy the Charitable Purpose.

2.8 To the extent allowed by applicable law, the City and REAP separately agree to maintain the confidentiality of any record directly related to or generated as a result of this Agreement in accordance with all applicable local, State or Federal laws. Nothing in this Agreement waives an otherwise applicable exception to disclosure.

3. CITY RESPONSIBILITIES

3.1 The City, at its own expense, agrees to identify and qualify CPS Energy customers living within the Covered City Area who are eligible to receive REAP assistance in accordance with the current year Utility Assistance Program Criteria.

3.2 The City, at its own expense, agrees to coordinate its REAP assistance operations with REAP.

3.3 The City, at its own expense, will provide the case management services necessary to have REAP assistance energy credits distributed to eligible CPS Energy customers who reside within the Covered City Area and to identify and refer eligible customers to CPS Energy for the purchase, installation, operation and maintenance of Eligible Products.

3.4 The City, at its own expense, will collect and maintain demographic information about each REAP applicant who resides within the Covered City Area that will be used to better tailor REAP's services for low income and economically vulnerable CPS Energy customers.

3.5 The City, at its own expense, shall verify whether any REAP applicant resides in the Covered City Area or the Covered County Area. Any REAP applicant that the City determines resides within the Covered County Area shall be referred to the County's Department of Economic and Community Development (or its successor department or agency). This information will be made available to REAP.

3.6 The City will provide the following information to REAP, free of charge, at least on a quarterly basis and at any other times when reasonably requested by REAP.

- a. Number of households served;
- b. Number of seniors (age 60 +) served;
- c. Number of families with children served;
- d. Number of individuals with disabilities served;
- e. Number of households with medical equipment served;
- f. Number of critical care Individuals served; and
- g. Number of households served in each City Council District.

3.7 The City, at its own expense, agrees to provide the following information to each REAP applicant who resides within the Covered City Area:

- a. Information about CPS Energy's programs relating to senior citizens, critical care individuals, conservation and weatherization;
- b. Information about Eligible Products, including the process for Reimbursement Funds;
- c. Low-cost or no-cost energy conservation tips; and
- d. Other similar information provided by REAP.

REAP, at its expense, will provide the materials cited above to the City for distribution to each REAP applicant who resides within the Covered City Area.

3.8 The City understands and agrees that REAP assistance energy credits may only be used for the purposes set forth in REAP's Articles of Incorporation and By-Laws. The City also understands and agrees that REAP assistance energy credits will not be available to pay for or reimburse the City for salaries, administrative or similar costs, or for any other purpose that REAP has not authorized.

3.9 At its sole cost and discretion, the City may contract with local non-profit agencies to assist with managing or handling some of City's responsibilities contemplated under this Agreement. The City shall ensure that these agencies adhere to all of REAP's applicable current year Utility Assistance Program Criteria which have been previously approved in writing by both the City and REAP. No administrative or other costs will be charged by any such agencies to either REAP or CPS Energy.

3.10 It is expressly understood and agreed that the City's obligations under this Agreement are contingent upon the availability of revenue and the City's adoption of a budget to meet the City's liabilities under this Agreement. Should the City not receive sufficient funds to perform its obligations, the City may, at its option, either terminate this Agreement or negotiate with REAP to reduce the City's responsibilities accordingly.

4. RECORDS

4.1. In order to assure that REAP assistance energy credits are being used for the charitable purposes authorized by the REAP Board, the City agrees to keep accurate and detailed records of the use of REAP assistance energy credits and Reimbursement Funds which are authorized for customers residing within the Covered City Area. At a minimum, these records will include the REAP applicant files and any electronic databases used to store and track REAP distributions. Hard copy files will be maintained at City field sites for one (1) year and for an additional two (2) years in other storage facilities, or if electronically maintained, for three (3) years. The City agrees to give the REAP Board full and complete access to all the records cited above within two (2) weeks of a request for a records review by the REAP Board.

5. FUNDRAISING

5.1. The City will not, without the express written consent of the REAP Board, engage in fundraising activities relating to the Charitable Purpose. In addition, the City will not, without the express written consent of the REAP Board, use REAP's name or logo for any purpose other than those purposes directly

related to providing CPS Energy's customers with information regarding the REAP utility assistance programs and Eligible Products.

6. TERMINATION

6.1. Notwithstanding anything either stated or implied in this Agreement to the contrary, this Agreement may be terminated by either party at any time by giving written notice of termination to the other party at least 30 days in advance of the effective date of such termination.

7. TEXAS LAW TO APPLY

7.1. This Agreement shall be governed in accordance with the laws of the State of Texas, and all obligations of the parties created under this Agreement are performable in Bexar County, Texas.

8. NOTICES

8.1. For purposes of this Agreement, all official communications and notices between the parties shall be deemed sufficient if in writing and delivered in person, mailed by overnight or express service or mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY:	REAP:
Director, Department of Human Services City of San Antonio 106 S. St. Mary's St., 7 th Floor San Antonio, Texas 78205	Assistant Secretary / Treasurer REAP, Inc. REAP, Inc. P.O. Box 1771, Mail Drop 101011 San Antonio, TX 78296

Notice of changes of address by either party must be made in writing and delivered to the other party's last known address within five (5) business days of such change.

9. PARTIES BOUND

9.1. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

10. GENDER

10.1. Words of gender used in this Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

11. RELATIONSHIP OF PARTIES

11.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto.

12. CAPTIONS

12.1. The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

13. SEVERABILITY

13.1. If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future laws during the term of this Agreement, it is the intention of the parties hereto that the remainder of the Agreement shall not be affected thereby, and that in lieu of each clause or provision of the Agreement that is held invalid, illegal or unenforceable, a new clause or provision be added as similar in the terms and content, to be legal, valid, and enforceable under the Agreement.

14. ENTIRE AGREEMENT

14.1. This Agreement constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon, and supersedes all prior and contemporaneous agreements between the parties, whether oral or written, expressed or implied, regarding the same subject matter. The agreement executed May 24, 2016 and made effective January 1, 2016 regarding the same subject matter is terminated in favor of this Agreement upon execution by the Parties. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

IN WITNESS OF WHICH this Agreement has been executed on this ____ of _____, 2019, but shall be effective as of the Effective Date, in duplicate originals, each of which will have the full force and effect of an original.

CITY OF SAN ANTONIO

RESIDENTIAL ENERGY ASSISTANCE PARTNERSHIP, INC.

Melody Woosley, Director
Department of Human Services

Paula Gold-Williams
Assistant Secretary / Treasurer

Appendix A – Sample Letter – Request for Additional Transfer
Appendix B – 2019 – 2020 Utility Assistance Program Criteria



APPENDIX A

Sample Letter – Request for Additional Transfer



CITY OF SAN ANTONIO

November 7, 2018

Shannon R. Albert, CPA, CIA
Sr. Director, Capital Markets & Cash Management
CPS Energy
145 Navarro
San Antonio, Texas 78205

Dear Shannon,

The City of San Antonio, Department of Human Services is formally requesting a transfer in the amount of \$500,000 in REAP funds from the San Antonio Area Foundation Corpus to the REAP operating account. To date, DHS has credited a total of \$1.7 Million to customer accounts from January through October requiring additional funds to be credited to the REAP operating account for the remainder of the calendar year.

Should you have any questions, please contact me at (210) 207-5851.

Sincerely,

Edward Gonzales
Assistant Director

cc: Gary Gold, Vice President of Accounting, CPS
Richard Keith, Human Services Administrator, DHS

DEPARTMENT OF HUMAN SERVICES

106.5 ST. ANTONIO ST., 7TH FLOOR • SAN ANTONIO, TX 78205 • TEL: 210.207.8198 • FAX: 210.207.4754



APPENDIX B

2019 - 2020 Utility Assistance Program Criteria

(Initial Term)

Qualification Criteria

To qualify for REAP low-income assistance energy credits, a recipient must:

- Have income at or below 125% of federal poverty guidelines and be experiencing financial hardship.
- Be elderly, handicapped, have small children in the home, or require critical-care equipment.
- Be a resident within the corporate boundaries of the City of San Antonio or Bexar County.

Recipients will be asked to present proof of income, hardship and number of family members.

Qualifying low-income beneficiaries may receive REAP assistance energy credits two times per calendar year (\$400 cumulative max per year).

To qualify for REAP Eligible First Responder assistance energy credits, a recipient must:

- Be an individual in the City of San Antonio or elsewhere in Bexar County that has significantly decreased abilities to regulate his/her core body temperature due to severe burns received during the course and scope of performing duties of a law enforcement officer or firefighter.
- Provide supporting medical documentation or certification

Eligible First Responder beneficiaries may receive REAP assistance energy credits applicable towards the electric portion of their CPS Energy bills in an amount up to \$94 per month from April through October of each year.

Low-income and First Responder beneficiaries may also receive an approved Eligible Product valued up to \$315 one time per calendar year.

Current approved Eligible Products: solar security light

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ATTACHMENT II

**AMENDMENT TO
SOFTWARE AS A SERVICE AGREEMENT FOR
DHS UTILITY SERVICE APPLICATION**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Amendment is entered into by and between the City of San Antonio, a Texas Municipal Corporation, (hereinafter referred to as “City”), and Kinetech Cloud, LLC (hereinafter referred to as “Kinetech”), both of which may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

WHEREAS, the City entered into a Software as a Service Agreement with Kinetech for a DHS Utility Service Application that commenced on November 21, 2018, and terminates on November 20, 2019 (hereinafter referred to as “the Agreement”); and

WHEREAS, the Agreement provides for renewal and extension under the same terms and conditions for one additional, three year period with City Council approval (“Renewal Period One”) and includes subsequent renewal options for the City; and

WHEREAS, the Parties agree that the Agreement should be renewed and extended, and revised to increase the City’s usage capacity to 30,000 annual applications and to provide for up to \$20,000.00 for enhancements as requested by the City; and

WHEREAS, it is in the best interest of the City that an amendment of the Agreement now be executed; **NOW THEREFORE:**

City and Kinetech agree to amend the Agreement as follows:

1.0 AMENDMENTS

1.1 Term. City hereby elects to renew and extend the Agreement for Renewal Period One. Section 2.1 is hereby revised to read as follows:

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on November 21, 2018 (“Effective Date”) and terminate on November 20, 2022.

1.2 Infrastructure. Section 3.5, Infrastructure, is hereby revised to increase the City’s usage capacity from 15,000 to 30,000 annual applications. In conjunction with the licensed Application Software, Kinetech shall provide sufficient Infrastructure to support the anticipated requirements of the System for 30,000 annual applications.

1.3 Enhancements. Section 3.6.3, Enhancements, is revised to read as follows:

- 3.6.3 Enhancements. Kinetech shall provide Enhancements as requested by the City in an amount not to exceed \$20,000.00 for the fees specified in Article IV. Compensation to Kinetech.

1.4 License and Service Fees. Section 4.1 is revised to read as follows:

- 4.1.1 Original License Term. City shall pay Kinetech a fee in the amount of \$48,500.00 for the Original License Term.
- 4.1.2 Renewal Period One. City shall pay Kinetech a fee in the amount of \$36,250.00 for each year during Renewal Period One.
- 4.1.3 Renewal Period Two. If City elects to renew this Agreement for Renewal Period Two, City shall pay Kinetech a fee in the amount of \$39,250.00 for Renewal Period Two.
- 4.1.4 Renewal Period Three. If City elects to renew this Agreement for Renewal Period Three, City shall pay Kinetech a fee in the amount of \$39,250.00 for Renewal Period Three.

1.5 Invoicing. Section 4.3.3 is revised to read as follows:

- 4.3.3 Invoices for Enhancements. Invoices for Enhancements shall be submitted monthly for the hours incurred during said month. City shall have 30 days after receipt of any invoice hereunder to contest the invoice and may, without engaging in an act of default, withhold payment of fees that City disputes in good faith. The parties agree to work in good faith to promptly resolve all disputed amounts within 30 days after notice of dispute. City will pay the disputed amounts, if owed, immediately upon dispute resolution.

1.6 Final Acceptance. Section 4.5 is revised to read as follows:

- 4.5 Final acceptance of work products and services require written approval by Director. Payment will be made to Kinetech following demonstrable proof the products, services, or enhancements are completed to Director's satisfaction. City shall not be obligated or liable under this Agreement to any party, other than Kinetech, for the payment of any monies or the provision of any goods or services.

2.0 PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

2.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

- 2.2 This section only applies to a contract that:
- (1) is between a governmental entity and a company with 10 or more full-time employees; and
 - (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.
- 2.3 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 2.4 "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.
- 2.5 By executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**3.0 PROHIBITION ON CONTRACTS
WITH COMPANIES ENGAGED IN BUSINESS
WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Kinetech hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Kinetech's certification. If found to be false, or if Kinetech is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

4.0 PROVISIONS REMAIN IN EFFECT

All other terms, conditions, covenants and provisions of the above referenced Agreement, as previously amended, not specifically mentioned herein and revised by this document, are retained in their entirety, unchanged, and remain in full force in effect for the duration of said contract, and any renewals thereof.

5.0 ENTIRE AGREEMENT

This Agreement, together with its exhibits, if any, constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless the same are in writing, dated subsequent to the date hereto, and duly executed by the parties.

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO

KINETECH CLOUD, LLC

(Signature)

Printed
Name: _____
Title: _____
Date: _____

DocuSigned by:
Michael Guido
DEA998D80A304A4...

(Signature)

Printed
Name: Michael Guido
Title: Chief Executive Officer
Date: 9/23/2019

Approved as to Form:

Assistant City Attorney