

AGREEMENT
FOR REAP CONTRIBUTION AND SERVICES
BETWEEN
THE CITY OF SAN ANTONIO
AND
RESIDENTIAL ENERGY ASSISTANCE PARTNERSHIP, INC.

This the “Agreement,” effective as of January 1, 2016 (the “Effective Date”), is entered into by and between the City of San Antonio, a Texas municipal corporation (hereinafter referred to as “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 primary charitable purpose is to provide funds to help low-income individuals and families in the City of San Antonio and elsewhere in Bexar County pay their gas and electric utility bills (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 distribution of REAP’s assistance energy credits 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 corporate boundaries for the City (the “Covered City Area”); and

WHEREAS, the public purpose of this Agreement is to promote 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.

I. TERM

1.1 The initial term of this Agreement shall commence on the Effective Date and continue through December 31, 2018 (the “Initial Term”). Unless terminated under Section 7.1 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 2019 and 2020, with the Renewal Terms ending on December 31, 2019 and December 31, 2020, respectively. The Renewal Terms, along with the Initial Term, shall be collectively referred to herein as the “Term.”

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II. REAP RESPONSIBILITIES

2.1 REAP collects and invests charitable donations for its Charitable Purposes which it solicits from a variety of sources. During the Initial Term and each Renewal Term, REAP shall provide \$1,000,000 annually out of such donations and payments made by CPS Energy (the “Aggregate Annual Contribution”) in the form of assistance energy credits applied directly against CPS Energy customer accounts 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”). If additional funds are or become available in any given year, additional credits may be allocated by REAP to COSA contingent upon COSA having the capacity to administer the credits.

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 2.5, 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 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 to the City Program for eligible CPS Energy residential customers residing in the Covered City Area during the Initial Term and the Renewal Term.

2.2 REAP will also provide assistance energy credits on an annual basis to eligible CPS Energy residential customers residing within the Covered City Area based on proceeds 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.

2.3 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

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residents and, 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.

2.4 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.

2.4 The City may re-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 approved by authorized representatives for both the County and the City. REAP will update the City and County percentages within a reasonable time period, not to exceed 90 days after receipt of a proper notice.

2.5 REAP agrees to make charitable assistance energy credits for the Charitable Purpose to eligible CPS Energy ratepayers who reside within the Covered City Area by coordinating the crediting of their accounts 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.

2.6 It is understood and agreed by the parties to this Agreement that eligible CPS Energy ratepayers may only receive REAP assistance for the Charitable Purposes up to twice per calendar year; however, waivers can be granted on a case-by-case basis upon DHS' discretion.

2.7 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.

III. CITY RESPONSIBILITIES

3.1 The City, at its own expense, agrees to identify and qualify CPS Energy ratepayers 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 utility assistance operations with REAP.

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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 ratepayers who reside within the Covered City Area. In addition, 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 ratepayers. Among other things, the City shall verify whether any REAP applicant resides in the Covered City Area or the Covered County Area. Any REAP applicant whom the City determines resides within the Covered County Area shall be referred to the County's Department of Community Resources (or its successor department or agency). This information will be made available to REAP. The City will provide the information set forth herein to REAP, free of charge, at least on a quarterly basis and at any other times when reasonably requested by REAP. This information includes:

- a. Number of Households Served;
- b. Number of Seniors 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 by Council District

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 on CPS Energy's programs relating to senior citizens, critical care individuals, conservation and weatherization;
- b. Low-cost or no-cost energy conservation tips;
- c. Other similar information provided by REAP; and

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.

3.4 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.

3.5 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.

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

IV. RETAIL COMPETITION

4.1 The parties to this Agreement acknowledge that REAP is receiving payments from CPS Energy under a separate agreement (the "CPS Energy-REAP Agreement"). Notwithstanding any other provision of this Agreement to the contrary, in the event the City and CPS Energy determine that CPS Energy will participate in retail competition at any time during the term of this Agreement, the City agrees to take any necessary actions to ensure payments made by CPS Energy to REAP under the CPS Energy-REAP Agreement will constitute a basis for reduction by CPS Energy in the non-bypassable charge imposed on retail customers served by a municipally-owned utility participating in retail competition to fund the System Benefit Fund, as described and provided in subsection 39.903(c) of the Texas Utilities Code. In such event, the City agrees that qualification requirements for the recipients of the benefits from REAP under this Agreement will conform to the qualification requirements for System Benefit Fund beneficiaries.

V. RECORDS

5.1 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 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 immediate access to all the records cited above within two (2) weeks of a request for a records review by the REAP Board.

VI. FUNDRAISING

6.1 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.

VII. TERMINATION

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7.1 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.

VIII. TEXAS LAW TO APPLY

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

IX. NOTICES

9.1 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:
Director
Department of Human Services
106 S. St. Mary's St., 7th Floor
San Antonio, Texas 78205

REAP:
Assistant Secretary / Treasurer
REAP, Inc.
P.O. Box 1771, Mail Drop 101005
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.

X. PARTIES BOUND

10.1 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.

XI. GENDER

11.1 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.

XII. RELATIONSHIP OF PARTIES

12.1 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.

XIII. CAPTIONS

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13.1 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.

XIV. SEVERABILITY

14.1 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.

XV. AGREEMENT ENTIRETY & APPROVAL

15.1 This Agreement 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 is 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 the ____ day of _____, 2016, but effective as of the Effective Date, in duplicate originals, each of which will have the same 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

APPROVED AS TO LEGAL FORM:

City Attorney