

AGREEMENT
BETWEEN THE
CITY OF SAN ANTONIO
AND
CPS ENERGY IN CONNECTION WITH
PROJECT WARM

This Agreement Between the City of San Antonio and CPS Energy in Connection With Project WARM (hereinafter the “Agreement”) is entered into as of January 1, 2016 (the “Effective Date”) by and between the City of San Antonio (hereinafter referred to as “City”), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and the City Public Service Board (“CPS Energy”) whose address is P. O. Box 1771, San Antonio, Texas 78296. The City and CPS Energy are sometimes individually referred to herein as a “party” and collectively as the “parties.”

RECITALS

WHEREAS, the Project Winter Assistance Relief Mobilization (hereinafter referred as “Project WARM.”) Plan, which provides utility relief to residential ratepayers of CPS Energy who qualify based on certain Eligibility Criteria set forth in **Attachment I** hereto (the “Plan Purpose”), was established by the City Council in 1982; and

WHEREAS, Project WARM is funded (a) by voluntary donations (collectively, the “Donations”), and (b) from investment income (collectively, the “Fund Income”) generated by the \$7,500,000 endowment fund for Project WARM (the “Fund Corpus”) which was initiated by two (2) Texas oil and gas producing partnerships, Wagner & Brown and Wagner & Brown II, pursuant to an Assignment of Overriding Royalty Interest in Natural Gas Reserves dated as December 28, 1984 (the “Assignment”); and

WHEREAS, in the past, Project WARM has been jointly administered by the City of San Antonio’s Department of Human Services (or its predecessor departments or agencies) and CPS Energy; and

WHEREAS, it is now necessary to execute an agreement between the City and CPS Energy to set forth the responsibilities of the parties with respect to the administration and operation of Project WARM for the Term (as defined in Section 1.1 of this Agreement).

NOW THEREFORE, the parties severally 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.

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 4.1 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. PROJECT WINTER ASSISTANCE
RELIEF MOBILIZATION PLAN; TRANSFER OF FUNDS**

- 2.1 The City and CPS Energy agree to perform their respective duties in accordance with this Agreement and the provisions set forth in the Project WARM Plan, a copy of which is attached hereto and incorporated herein for all purposes as Attachment I, all at their own separate cost and expense. None of their respective costs shall be assessed against or paid by Project WARM.
- 2.2 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 CPS Energy to reduce City's responsibilities accordingly.

III. SUBCONTRACTING

- 3.1 The City, at its sole cost and expense (if any), may subcontract implementation of the Project WARM Plan and the processing of applications for Project WARM assistance energy credits to local non-profit agencies for the benefit of eligible CPS Energy residential ratepayers who reside within the established boundaries for the City. The City shall ensure that these agencies will adhere to the Program Guidelines and Eligibility Criteria, both of which are set forth in **Attachment I**, when undertaking such tasks.

IV. TERMINATION

- 4.1 This Agreement may be terminated by either party without cause provided that written notice of such termination is given to the other party at least thirty (30) days prior to the proposed termination date.

V. CONFIDENTIAL INFORMATION

- 5.1 The City and CPS Energy hereby agree to maintain the confidentiality of any record directly related to or generated as a result of this Agreement in accordance with and to the extent permitted by all applicable local, state and federal laws.

VI. CONFLICT OF INTEREST

- 6.1 CPS Energy acknowledges that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any instrumentality of the City such as CPS Energy. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individuals or

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entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

VII. NOTICES

- 7.1 For purposes of this Agreement, all official communications and notices between the parties shall be deemed sufficient if in writing and delivered in person to designated addressee, or forwarded by U.S. registered or certified mail, postage prepaid, to the respective address set forth below:

City of San Antonio
ATTN: Director, Human Services
106 S. St. Mary's St., 7th Floor
San Antonio, TX 78205-3603
P.O. Box 839966
San Antonio, Texas 78283-3966

CPS Energy
ATTN: Executive Vice President and Chief Financial Officer
P.O. Box 1771, Mail Drop 101005
San Antonio, Texas 78296-1771

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.

VIII. SEVERABILITY

- 8.1 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 thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein; it is also the intention of the parties hereto that in lieu of each provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible, legal, valid and enforceable.

IX. TEXAS LAW TO APPLY

- 9.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created herewith are performable in the State of Texas.

X. CAPTIONS

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

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XI. COMPLIANCE WITH LAWS AND REGULATIONS

11.1 All of the tasks performed under this Agreement by the parties and their agents or subcontractors shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City of San Antonio and County of Bexar.

XII. ENTIRE AGREEMENT

12.1 This instrument, along with the provisions set forth in **Attachment I** hereto, contain the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral modification concerning this instrument shall be of no force and effect until it is subsequently set forth in writing and signed by an authorized representative of both parties.

EXECUTED the _____ day of _____, 2016, but effective as of the Effective Date.

CITY OF SAN ANTONIO

CITY PUBLIC SERVICE BOARD

Melody Woosley
Director
Department of Human Services

Paula Gold-Williams
Interim Chief Executive Officer

APPROVED AS TO FORM:

City Attorney

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ATTACHMENT I

PROJECT WINTER ASSISTANCE RELIEF MOBILIZATION PLAN

This Attachment I is attached to and made a part of that certain Agreement between the City of San Antonio and CPS Energy in connection with Project WARM (hereinafter the “Agreement”) effective as of January 1, 2016. All capitalized terms used, but not defined, in this Attachment I shall have the same meaning as set forth in the Agreement.

Use of Project WARM Funds; Restrictions

Project WARM was implemented in order to provide assistance energy credits to eligible CPS Energy residential ratepayers based on the Eligibility Criteria set forth below (the “Project WARM’s Purpose”). Only the Donations to, and Fund Income generated by, the Fund Corpus account shall be used to provide assistance energy credits in connection with Project WARM’s Purpose. As such, unless a different use of the Fund Corpus is determined to be a better way to achieve the Fund’s energy assistance objectives, Project WARM shall perpetuate itself indefinitely without accessing the Fund Corpus.

Local Administering Agency

The City’s Department of Human Services (the “DHS”) and CPS Energy jointly administer Project WARM. CPS Energy administers Project WARM from a fiscal perspective, which includes the coordination of all activities related to Donations, investments, fund administration, and ratepayer credits. DHS is responsible for determining the eligibility of CPS Energy ratepayers based on written criteria for Project WARM’s Purpose as mutually agreed to by DHS and CPS Energy (the “Eligibility Criteria”) and for certifying to CPS Energy the amount of assistance energy credits given to eligible applicants.

CPS Energy’s Responsibilities*

- (1) Print and distribute brochures informing ratepayers of the availability of utility assistance and conservation programs;
- (2) Manage Project WARM accounts, investments, donations, and account distributions;
- (3) Coordinate Project WARM activities with DHS; and
- (4) Prepare and provide DHS with an annual Project WARM fiscal summary.

*Funding for these activities will not be paid out of Project WARM funds (i.e., Donations, Fund Income, or Fund Corpus).

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DHS's Responsibilities*

- (1) Conduct community outreach through field offices;
- (2) Perform ratepayer intake and eligibility determination;
- (3) Process amounts associated with eligible ratepayers assistance energy credits through the CPS Energy Portal;
- (4) Coordinate Project WARM's administrative, fundraising, and operational activities with CPS Energy;
- (5) Maintain Project WARM applicant case folders and records associated with all intake and eligibility determination; and
- (6) Prepare and provide CPS Energy with annual Project WARM performance reports.

*Funding for these activities will not be paid out of Project WARM funds (i.e., Donations, Fund Income, or Fund Corpus).

Outreach Activities

Outreach activities will be consistent with the intent of Project WARM's goals and objectives. A concerted effort will be made to inform as many potential applicants as possible about the Project.

In addition to CPS Energy bill inserts, there will be extensive utilization of the social service delivery network, public service announcements, and the media to publicize Project WARM. Outreach activities will be conducted in both English and Spanish.

Service Delivery Period

CPS Energy and DHS will undertake their respective responsibilities for Project WARM continuously throughout the Term.

Service Delivery Coverage

All CPS Energy ratepayers living within the CPS Energy service area will be eligible to apply for assistance under Project WARM. The Project will not be limited to any special impact area. It is anticipated that approximately 10-20% of the available assistance energy credits will be provided to eligible CPS Energy ratepayers living outside the city limits of San Antonio.

Intake Centers

Applications will be taken at DHS offices. Other locations will be utilized as required.

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Eligibility and Certification

DHS will determine and certify the eligibility of applicants based on the Eligibility Criteria, prioritizing those with the greatest need. The total assistance energy credits to be granted to all eligible applicants may not exceed the amount of Donations or Fund Income available in the Project WARM assistance account.

Reporting Requirements

DHS will prepare a quarterly report containing the following data:

- (1) Total number of households and household members assisted;
- (2) Summary of assistance by Council District;
- (3) Households served by priority category; and
- (4) Total funds credited.

Program Guidelines

The intent of Project WARM is to provide assistance energy credits to eligible CPS Energy ratepayers in the San Antonio area. Assistance is determined by the Eligibility Criteria set forth below and includes demonstrated need, priority category, household income, household resource management, households with elderly and disabled persons, and families with children. Applicants must be residents of the CPS Energy service area and be a CPS Energy ratepayer.

Eligibility Criteria

A. Income

Applicants must have a total household income at or below 125% of the Federal Poverty Level (the “FPL”) at the time of application. New FPL guidelines are normally issued between January and March each year, and applicants will be processed using the most recently established guidelines.

B. Resources

The most current guidelines from the Texas Department of Housing & Community Affairs will be used to calculate a household’s total income.

C. CPS Energy Ratepayer

The applicant must have a CPS Energy statement in their name or in their spouse’s name. If an applicant’s bill is not in the applicant’s name or their spouse’s name, the applicant must initiate a name change on the CPS Energy account prior to services being rendered.

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D. Priority

Priority will be given to eligible applicants who are elderly (age 60 years and older), who are identified as medical Critical Care ratepayers, that have a documented disability, and/or families with children under the age of 18. All of these priority groups must also meet the income eligibility criteria.

E. Limitation of Payment

Each applicant household may be eligible for assistance not to exceed \$150.00. The exact amount of assistance will be based on the household's demonstrated need, and effective utilization of the total household resources. If funds are available, and the household crisis continues, an exception may be made and additional assistance within the same calendar year may be provided with the approval of DHS's management staff. Applicants may receive utility assistance from REAP in the same year assistance is received from Project WARM, but only so long as the assistance provided under both programs does not exceed \$400.00.

F. Allowable Assistance

Only credits to CPS Energy for past due or current bills related to the utilization or procurement of energy can be provided with Project WARM funds. These funds cannot be used to pay for illegal usage, returned check fees, reconnection fees, or deposits. The only exception is that deposits may be paid for applicants who are homeless and in the process of establishing permanent housing.

G. Renters

Project WARM may not serve or otherwise provide assistance of any kind to renters who do not pay their CPS Energy bill separate from their rent. For those renters who pay their CPS Energy bill separate from the rent, the provisions set forth in this Plan will apply.

H. Waivers

In cases of extreme hardship or emergencies, the Director of DHS or Director's designees may grant special waivers for any of the eligibility criteria or assistance limits. A waiver may not be granted for the requirement that the applicant be a CPS Energy ratepayer.

Appeals Process

In order to provide equitable services to all eligible applicants, those who have been denied assistance will have each of the following: the right to be informed in writing of the reasons for the denial of requested credits; the right of appeal to the Casework Supervisor, Program Manager, and the DHS Director in succession; and, the right to a prompt resolution of the appeal. In all appeals, the determination by the DHS Director will be final.

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Assistance Credits

Neither the City, nor CPS Energy, will charge any of their respective administrative costs to Project WARM or each other. The actual amount available for Project WARM assistance energy credits during each term will be subject to the availability of Donations and Fund Income then being held in the Project WARM account.

Outside Agencies

At its sole discretion, the City may contract with local social service agencies to assist in the implementation of the Project WARM Plan and process applications for assistance energy credits from Project WARM funds. These agencies must adhere to all the provisions of the current Project WARM Plan. No administrative or other costs will be charged by these agencies to the CPS Energy or Project WARM.