

**E-16 RIDER PROGRAM AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO AND CARBONFREE**

This E-16 Rider Program Agreement (hereinafter referred to as this "Agreement") is made and entered into by and among the City of San Antonio (the "City"), a municipal corporation of the State of Texas, acting by and through its City Manager or his designee, and Carbonfree Chemicals SPE I LLC (hereinafter referred to as "CARBONFREE"), a Delaware corporation. Together, the CITY and CARBONFREE may be referred to herein as the "Parties."

WHEREAS, CARBONFREE is engaged in an economic development project consisting of a manufacturing facility located at 11503 Bulverde Road, San Antonio Texas, 78217, and more specifically described in **Exhibit A** (the "Project Site"), that will result in the retention of sixty-seven (67) full-time jobs, the creation of nine (9) new full-time jobs (the "Project") to be located at the Project Site or within a two-mile radius of the Project Site; and

WHEREAS, CARBONFREE has requested the endorsement of the CITY to participate in CPS Energy's E-16 Rider Program (**Exhibit B**), a program designed to provide CARBONFREE with a reduced energy rate for its high consumption use of energy; and

WHEREAS, based upon CARBONFREE complying with the terms and conditions of this Agreement, the San Antonio City Council has authorized the City Manager or his designee to enter into this Agreement with CARBONFREE in accordance with City Ordinance No. _____, passed and approved on _____ and upon execution of this Agreement to endorse CARBONFREE for participation in CPS Energy's E-16 Economic Incentive Rider Program; **NOW THEREFORE:**

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:

SECTION 1. AGREEMENT PURPOSE

The purpose of this Agreement is to establish the terms and conditions under which CARBONFREE will be endorsed by CITY to participate in CPS Energy's E-16 Economic Incentive Rider Program. It is understood by the Parties that such endorsement shall continue so long as CARBONFREE is in compliance with this Agreement. Termination of this Agreement by CITY, in accordance with the terms and conditions herein, shall serve as rescindment of the endorsement which shall result in the denial by CPS Energy of a reduced energy rate to CARBONFREE for activities at the Project Site and the recapture of funds as outlined in Section 14.

SECTION 2. PROJECT REQUIREMENTS

A. Project Site. CARBONFREE will own, hold an interest in or otherwise control the Project Site for the Term of this Agreement, as further defined in Section 3 below.

B. Business Activities. Provided that Capital Aggregates supplies a sufficient amount of flue gas to support the Project, CARBONFREE shall conduct chlor-alkali production and carbon capture operations at the Project Site (such activities hereinafter referred to as the "Business Activities") as of the Effective Date of this Agreement, and thereafter operate same at the Project Site for the Term of this Agreement, except to the extent said Project Site may be rendered unsuitable for such use due to a Force Majeure

Event (as defined in Section 15 of this Agreement). Except as provided herein, CARBONFREE covenants and agrees that the Business Activities will not be changed without the written consent of CITY, such consent not to be unreasonably withheld, conditioned or delayed. However, such consent shall not be necessary if a Related Organization (being defined as a parent, subsidiary or affiliate organization of CARBONFREE or any entity which succeeds to or receives an assignment of CARBONFREE's interest under this Agreement as a result of a merger, acquisition, or other corporate restructure or reorganization of CARBONFREE, or any parent, subsidiary or affiliate of such entity) occupies the Project Site and continues to use the premises for the Business Activities consistent with the terms and conditions of this Agreement. To be eligible for the benefits of this Agreement, the Related Organization must agree in writing, to comply with all applicable terms herein from and after the date it succeeds to CARBONFREE's interest in this Agreement, and if requested by CITY, the Related Organization must enter into an amendment to this Agreement evidencing such agreement. In the event of any such transfer to a Related Organization, CARBONFREE must notify CITY in writing of same no later than the thirtieth (30th) calendar day following the effective date of such transfer. CARBONFREE acknowledges that any change in the principal use of the Project Site from that contemplated herein without prior written approval of CITY, to the extent same is required under this Agreement, may result in a loss or recapture of the economic development incentive value to be provided to CARBONFREE under this Agreement.

C. Job Retention. CARBONFREE shall retain for the Term of the Agreement SIXTY-SEVEN (67) Full-Time Jobs, as defined below, employed at the Project Site or within a two mile radius of the Project Site as of the Effective Date.

D. Job Creation. CARBONFREE shall create at least NINE (9) new Full-Time Jobs as defined below at the Project Site, or within a two mile radius of the Project Site, by December 31, 2021, and retain those jobs for the Term of the Agreement.

E. Full-Time Job. For the purposes of this Agreement, a Full-Time Job shall be a job by which an individual who works at the Project Site, or within a two mile radius of the Project Site, as an employee of GRANTEE is paid for the equivalent of approximately two thousand eighty (2,080) straight-time paid hours in a fiscal year.

F. Industry Wage. CARBONFREE shall pay all employees located at the Project Site, or within a two mile radius of the Project Site, without regard to the number of jobs required to be created or maintained hereunder, at least the All Industry Wage ("All Industry Wage" currently means a minimum of SIXTEEN DOLLARS AND NINETY-FOUR CENTS (\$16.94) per hour exclusive of benefits, bonuses, overtime, commissions, shift differentials, and any other non-guaranteed wages). The Texas Work Commission publishes this wage annually and the amount for the All Industry Wage hereunder shall automatically be adjusted to reflect the most current All Industry Wage published by the Texas Work Commission.

G. Benefits. CARBONFREE shall offer all of its employees at the Project Site, or within a two mile radius of the Project Site, and their dependents access to a benefits package, including a health insurance program.

H. Internships. CARBONFREE shall develop a paid internship program and shall hire a minimum of two (2) paid interns by December 31, 2021. Thereafter, if this Agreement is still in effect, CARBONFREE shall hire and maintain interns annually based on the CPS Energy discount provided per the E-16 Rider Program in the immediately prior year (which shall be calculated based on the average of the monthly discounts CARBONFREE received from CPS Energy during the twelve months of the prior year) as set out in the table below:

<u>CPS Energy Discount</u>	<u>Number of Interns</u>
10%	2
25%	4
50%	6

I. Small Business Contracting. CARBONFREE shall make a good faith effort to contract with and to purchase from local small businesses throughout the Term of this Agreement.

J. Workforce Development. CARBONFREE shall make a good faith effort to coordinate and to work with local colleges and universities to help develop curriculum and skills training to maintain a strong workforce pipeline.

K. Sustainability. CARBONFREE shall make a good faith effort to conduct its Business Activities in an environmentally sustainable manner.

L. Certification. Within thirty (30) calendar days of the end of each calendar year during the Term of this Agreement, CARBONFREE will provide CITY's Director of Economic Development Department with an annual certification from an officer or representative of CARBONFREE attesting to the number of Full-Time Jobs maintained and created at the Project Site or within a two mile radius of the Project Site during the preceding year, as well as wages paid, and the annual average salary for all such employees.

SECTION 3. TERM PERIOD

The Term referenced in this Agreement shall commence upon the Effective Date and shall continue concurrently with CARBONFREE's participation in the E-16 Rider Program and two years following the conclusion of CARBONFREE's participation in the E-16 Rider Program (the "Term"), unless terminated as otherwise provided herein.

SECTION 4. CITY'S OBLIGATIONS

CITY's sole obligation under the terms and conditions of this Agreement shall be a written endorsement by its governing body to the governing board of CPS Energy providing the CITY's support of CARBONFREE'S participation in CPS Energy's E-16 Rider Program. It is acknowledged by the Parties that such an endorsement is a requirement of the E-16 Rider Program and would produce monetary benefit to CARBONFREE.

SECTION 5. RETENTION AND ACCESSIBILITY OF RECORDS

A. Retention. CARBONFREE shall maintain the records and supporting documentation (the "Records") relating to: 1) the creation and maintenance of Full-Time Jobs; and 2) salaries of all employees at the Project Site, or within a two mile radius of the Project Site. CARBONFREE shall retain such records and any supporting documentation through the end of the Term of this Agreement.

B. Access. CARBONFREE shall, following at least five (5) business days' advance written notice from CITY, give CITY, its designee, or any of their duly authorized representatives, access to the Records at the Project Site during normal business hours. CITY's access to the Records will be limited to reviewing information needed to verify that CARBONFREE is and has been complying with the terms of this Agreement. CITY may not copy or otherwise take control of such Records. Any information that is

not required by law to be made public shall be kept confidential by CITY. CARBONFREE shall not be required to disclose to CITY any information that by law or by contract CARBONFREE is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, CITY reserves the right to require CARBONFREE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of CARBONFREE. The rights to access the Records shall continue through the Term of this Agreement. Failure to provide reasonable access to the Records to authorized CITY representatives shall give CITY the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default.

SECTION 6. MONITORING

A. CITY reserves the right to confirm CARBONFREE's compliance with the terms and conditions of this Agreement. CITY shall consult with CARBONFREE and create a monitoring report noting its findings related to CARBONFREE'S compliance with the terms and conditions of this Agreement. CITY will provide CARBONFREE with a written report of the monitor's findings within ninety (90) calendar days following completion of the particular report. If the monitoring report notes deficiencies in CARBONFREE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by CARBONFREE and a reasonable amount of time in which to attain compliance. Failure by CARBONFREE to take action specified in the monitoring report, and failure to cure any deficiency in the applicable Cure Period in accordance with Section 13(A) herein, may be cause for suspension or termination of this Agreement, in accordance with Sections 13 and 14 herein.

B. CARBONFREE shall provide to CITY an annual certification with reasonable supporting information evidencing the creation of and filling of the number of jobs at the Project Site or within a two mile radius of the Project Site; and compliance with the wage requirements as specified in this Agreement.

SECTION 7. CONFLICT OF INTEREST

If applicable, CARBONFREE shall ensure that no employee, officer, or individual agent of CITY shall participate on behalf of CARBONFREE in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. To the extent CARBONFREE hires any former or current employee or official of CITY who would be subject to the CITY's ethics policy, as same exists from time to time, CARBONFREE shall take reasonable efforts to ensure that such person complies with all applicable requirements of the CITY's ethics ordinance in dealings between CITY and CARBONFREE.

SECTION 8. SECTARIAN ACTIVITY

None of the performances rendered by CARBONFREE under this Agreement shall involve, and no portion of the funds received by CARBONFREE under this Agreement shall be used in support of,

any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

SECTION 9. LEGAL AUTHORITY

A. Legal Authority. Each party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. Signatories. Each party represents and warrants to the other that the person or persons signing and executing this Agreement on behalf of such party has been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

SECTION 10. GOVERNING LAW AND VENUE

A. Notice to CITY. CARBONFREE shall give CITY notice in writing of any (i) OSHA complaint filed by an employee of CARBONFREE concerning the Project Site, or (ii) notice of any bankruptcy of CARBONFREE, or (iii) any notice given by CARBONFREE to its employees at the Project Site required under any applicable laws pertaining to contemplated job reductions at such premises. CARBONFREE shall submit a copy of each such notice required hereunder to CITY within thirty (30) calendar days after receipt or issuance, as applicable, unless such notice has been rescinded prior to the expiration of such 30-day period.

B. Texas Torts Claims Act. CARBONFREE acknowledges that CITY is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. Venue. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas, without giving effect to conflict of law rules. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 11. ATTORNEY'S FEES

In the event CARBONFREE or CITY should default under any of the provisions of this Agreement and the other should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees to pay to the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party so ordered by a court having jurisdiction over the Parties.

SECTION 12. CHANGES AND AMENDMENTS

A. Amendments in Writing. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by the Parties to this Agreement.

B. E-16 Program. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the E-16 Rider Program and the terms and conditions of this Agreement.

SECTION 13. SUSPENSION

A. Notice and Cure Period. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, if applicable, or anything else in this Agreement to the contrary, in the event CARBONFREE fails to comply with the terms of this Agreement, CITY shall provide CARBONFREE with written notification as to the nature of the non-compliance and grant CARBONFREE a sixty (60) day period following the date of CARBONFREE's receipt of CITY's written notification to cure any issue of non-compliance. Should CARBONFREE fail to cure any default within this period of time, or such longer period of time as may be reasonably necessary for CARBONFREE to cure the default in question if same cannot reasonably be cured within such sixty (60) day period, the CITY may, upon written Notice of Suspension to CARBONFREE, suspend this Agreement in whole or in part and withhold further energy costs savings to CARBONFREE until the default is cured. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

B. Lifting of Suspension. A suspension under this Section shall be lifted upon a showing by CARBONFREE that the event of default has been cured or by a written waiver of CITY of the term(s) in question.

C. No Liability. CITY shall not be liable to CARBONFREE or to CARBONFREE's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 14. DEFAULT, TERMINATION AND RECAPTURE, AND OTHER REMEDIES

A. Relocation Defined. For purposes of this section, "Relocation" "Relocated" or "Relocate" shall mean CARBONFREE or a Related Organization, or any other permitted transferee of CARBONFREE's rights under this Agreement, which has taken the place of CARBONFREE, transferring all Business Activities from the Project Site to a location outside of CITY's extra-territorial jurisdiction.

B. Default of CARBONFREE. CARBONFREE shall be in default under this Agreement:

1. Relocation. If during the Term of this Agreement, CARBONFREE occupies and uses the Project Site for its Business Activities and subsequently Relocates (as defined in this Section 14(A)) during the Term, then CITY shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation is completed. Unless CARBONFREE presents credible evidence to clearly indicate a date of Relocation, CITY's determination shall be final and conclusive. Upon termination, CITY shall have the right to recapture from CARBONFREE funds in the amount equivalent to the economic benefit CARBONFREE realizes during the Term of this Agreement as calculated by CPS

- Energy. The formula to determine the economic benefit shall be the projected energy rate that would be paid by a consumer not participating in the E-16 Rider Program minus the amount actually paid by CARBONFREE during its utilization of the E-16 Program. CITY shall be entitled to the payment of the amounts to which it is entitled within sixty (60) calendar days from the date it notifies CARBONFREE in writing of termination and its election to recapture such amounts.
2. Ceasing. If, after the conditions set forth in Section 2 of this Agreement are met, CARBONFREE occupies and uses the Project Site for its Business Activities and subsequently ceases conducting Business Activities at the Project Site for a continuous period of three (3) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure Event, then CITY shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the cessation occurred. Unless CARBONFREE presents credible evidence to clearly indicate a date of cessation, CITY's determination of a date of cessation shall be final and conclusive. Upon termination, CITY shall have the right to recapture from CARBONFREE funds in the amount equivalent to the economic benefit CARBONFREE realizes during the Term of this Agreement as calculated by CPS Energy. The formula to determine the economic benefit shall be the projected energy rate that would be paid by a consumer not participating in the E-16 Rider Program minus the amount actually paid by CARBONFREE during its utilization of the E-16 Program. CITY shall be entitled to the payment of the amounts to which it is entitled within sixty (60) calendar days from the date it notifies CARBONFREE in writing of termination and its election to recapture such amounts.
 3. Number of Jobs. If CARBONFREE, its affiliates and/or subsidiaries, any Related Organization, and/or other CITY-approved assignee permitted under this Agreement fails to, for any reason other than a Force Majeure Event, retain and create at the Project Site the Full-Time Jobs required to be retained and created pursuant to Section 2, or having done so thereafter fails to maintain such Full-Time Jobs at the Project Site throughout the Term of this Agreement, CITY may terminate this Agreement. Upon such termination, CITY shall have the right to recapture from CARBONFREE funds in the amount equivalent to the economic benefit CARBONFREE realizes during the Term of this Agreement as calculated by CPS Energy for periods during which CARBONFREE failed to comply with the Full-Time Job requirements set out in Section 2 at the Project Site or within a two mile radius of the Project Site. The formula to determine the economic benefit shall be the projected energy rate that would be paid by a consumer not participating in the E-16 Rider Program minus the amount actually paid by CARBONFREE during its utilization of the E-16 Program.
- C. Limitation on Recapture. Notwithstanding the foregoing, any such recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which CARBONFREE may be entitled at law or under this Agreement. The termination and/or recapture of grant funds provided in this Section 14 are not applicable to situations involving minor changes to the description of the Project Site, or CITY-approved changes in ownership or in management thereof, so long as CARBONFREE, its parent, subsidiary, affiliate or any successor or assignee allowed under the terms of this Agreement, continues conducting Business Activities or other authorized activities thereon as provided hereinabove.
- D. Limitation on Remedies. The foregoing termination and recapture rights shall be CITY's sole and exclusive remedies in the event CARBONFREE shall default under this Agreement.

SECTION 15. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)

In addition to relief expressly granted in this Agreement, CARBONFREE shall be granted relief from performance of this Agreement to the extent CARBONFREE is prevented and/or impaired from compliance and performance by any Force Majeure Event. In addition to the events mentioned in Section 16 above, a “Force Majeure Event” shall also include, but not be limited to, an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster, supply shortage, or other unavoidable cause not attributed to the fault or negligence of the CARBONFREE. It also includes an explosion or other casualty or accident, which is not the result of negligence, intentional act or misconduct on the part of CARBONFREE. The burden of proof for the need for such relief shall rest upon CARBONFREE. To obtain relief based upon this Section 15, CARBONFREE must file a written notice with the CITY’s Economic Development Department specifying the Force Majeure Event and the performance under this Agreement that such event is impairing.

SECTION 16. NO WAIVER

Failure by either party to exercise any right or remedy hereunder available to it shall not constitute a waiver of the right to exercise that or any other right or remedy at any time in the future, absent a written agreement to the contrary.

SECTION 17. NON-ASSIGNMENT

This Agreement is not assignable by any Party without the written consent of the non-assigning party. CITY shall not unreasonably withhold, condition, or delay its consent to any such assignment by CARBONFREE. Notwithstanding the foregoing, CARBONFREE may assign this Agreement to a Related Organization, without the written consent of the CITY. If CARBONFREE so assigns this Agreement to a Related Organization, it will provide notice of such assignment to CITY on or before the ninetieth (90th) calendar day following the date of assignment. Any assignment of this Agreement in violation of this Section shall enable CITY to terminate this Agreement and exercise its rights under this Agreement, subject to Section 13 of this Agreement. Any assignment of this Agreement by CARBONFREE shall relieve CARBONFREE of all obligations and liabilities under this Agreement. Notwithstanding the foregoing, CARBONFREE and/or any successor to CARBONFREE’s interest in the this Agreement may collaterally assign and/or grant a security interest in the payments to be received by CARBONFREE hereunder without CITY’s consent if required by any lender providing financing to any such entity or any parent, subsidiary, or affiliated company of such entity.

SECTION 18. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 19. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the

address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO CITY:

TO CARBONFREE:

(Whether personally delivered or mailed):

City of San Antonio
Attn: Economic Development
P.O. Box 839966
San Antonio, Texas 78283-3966

Carbonfree Chemicals
Attn: Laurel Danielson
11839 Nacogdoches Rd
San Antonio, Texas 78217

- If by personal or overnight delivery:

Economic Development
Attn: Director
19th Floor
100 Houston St.
San Antonio, Texas 78205

SECTION 20. INCORPORATION OF EXHIBITS

Each of the Exhibits and Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Exhibit A- Project Site Description
Exhibit B – CPS Energy E-16 Rider Program Guidelines

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of _____ (the "Effective Date"):

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to the attached Ordinance Number _____ and CARBONFREE pursuant to its authority.

CITY OF SAN ANTONIO
a Texas Municipal Corporation

Erik Walsh
CITY MANAGER

ATTEST:

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

CARBONFREE CHEMICALS SPE I LLC



Name: Laurel Danielson
Title: Director of Finance

EXHIBIT A: Project Site Description

EXHIBIT B: CPS ENERGY E-16 Rider Program Guidelines