



CITY COUNCIL REGULAR MEETING CITY OF BAY CITY

Tuesday, September 22, 2020 at 6:00 PM
COUNCIL CHAMBERS | 1901 5th Street

COUNCIL MEMBERS

Mayor: Robert K Nelson

Mayor Pro Tem: Jason W. Childers

Council Members: William Cornman, Brent P. Marceaux, Becca Sitz, Julie Estlinbaum

Bay City is committed to developing and enhancing the long-term prosperity, sustainability, and health of the community.

AGENDA

THE FOLLOWING ITEM WILL BE ADDRESSED AT THIS OR ANY OTHER MEETING OF THE CITY COUNCIL UPON THE REQUEST OF THE MAYOR, ANY MEMBER(S) OF COUNCIL AND/OR THE CITY ATTORNEY:

ANNOUNCEMENT BY THE MAYOR THAT COUNCIL WILL RETIRE INTO CLOSED SESSION FOR CONSULTATION WITH CITY ATTORNEY ON MATTERS IN WHICH THE DUTY OF THE ATTORNEY TO THE CITY COUNCIL UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THE OPEN MEETINGS ACT (TITLE 5, CHAPTER 551, SECTION 551.071(2) OF THE TEXAS GOVERNMENT CODE).

CALL TO ORDER

INVOCATION & PLEDGE

Texas State Flag Pledge: *"Honor The Texas Flag; I Pledge Allegiance To Thee, Texas, One State Under God, One And Indivisible."*

Councilwoman Becca Sitz

CERTIFICATION OF QUORUM

MISSION STATEMENT

The City of Bay City is a community that fosters future economic growth, strives to deliver superior municipal services, invests in quality of life initiatives and is the gateway to the great outdoors. We encourage access to our unique historical and eco-cultural resources while maintaining our small-town Texas charm.

Councilwoman Becca Sitz

APPROVAL OF AGENDA

PUBLIC COMMENTS

State Law prohibits any deliberation of or decisions regarding items presented in public comments. City

Council may only make a statement of specific factual information given in response to the inquiry; recite an existing policy; or request staff places the item on an agenda for a subsequent meeting.

CONSENT AGENDA ITEMS FOR CONSIDERATION AND/OR APPROVAL

- 1. MINUTES OF COUNCIL WORKSHOP ON SEPTEMBER 8, 2020**
- 2. MINUTES OF REGULAR COUNCIL MEETING ON SEPTEMBER 8, 2020**
- 3. MINUTES OF SPECIAL CALLED COUNCIL MEETING ON SEPTEMBER 14, 2020**

REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL

- 4. ORDINANCE ~ DISCUSS, CONSIDER AND/OR APPROVE AN ORDINANCE OF THE CITY OF BAY CITY, TEXAS, ADOPTING A FEE SCHEDULE ATTACHED HERETO AS EXHIBIT "A" AND LABELED "APPENDIX B" TO BE ADDED TO THE CODE OF ORDINANCES OF THE CITY OF BAY CITY, TEXAS; ADOPTING FEES AND CHARGES FOR VARIOUS CITY SERVICES AND CONSOLIDATING THOSE FEES AND CHARGES FOR CONVENIENCE; PROVIDING FOR REPEAL; PROVIDING FOR RATIFICATION; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**
Scotty Jones, Finance Director
- 5. RESOLUTION ~ DISCUSS, CONSIDER AND/OR APPROVE A RESOLUTION AUTHORIZING THE AWARD OF A CONTRACT FOR ADMINISTRATIVE SERVICES AND SOFT COSTS PROJECT MANAGEMENT SERVICES FOR OF THE HOME OWNER REHABILITATION ASSISTANCE PROGRAM.**Scotty Jones, Finance Director
- 6. RESOLUTION~ DISCUSS, CONSIDER AND/OR APPROVE A RESOLUTION OF THE CITY OF BAY CITY TEXAS ADOPTING TCAP'S PROFESSIONAL SERVICES AGREEMENT AND GEXA ENERGY'S COMMERCIAL ELECTRIC SERVICE AGREEMENT FOR POWER TO BE PROVIDED ON AND AFTER JANUARY 1, 2023.**
Scotty Jones, Finance Director

CLOSED / EXECUTIVE SESSION

OPEN SESSION

Discuss, consider and/or take action on item(s) listed in Executive/Closed Session, (if any).

ITEMS / COMMENTS & MAYOR AND COUNCIL MEMBERS

ADJOURNMENT

AGENDA NOTICES:

Action by Council Authorized: The City Council may vote and/or act upon any item within this Agenda. The Council reserves the right to retire into executive session concerning any of the items listed on this Agenda, pursuant to and in accordance with Texas Government Code Section 551.071, to seek the advice of its attorney about pending or contemplated litigation, settlement offer or on a matter in which the duty

of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflict with the Open Meetings Act and may invoke this right where the City Attorney, the Mayor or a majority of the Governing Body deems an executive session is necessary to allow privileged consultation between the City Attorney and the governing body, if considered necessary and legally justified under the Open Meetings Act. The City Attorney may appear in person, or appear in executive session by conference call in accordance with applicable state law.

Attendance By Other Elected or Appointed Officials: It is anticipated that members of other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

Executive Sessions Authorized: This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

CERTIFICATION OF POSTING

This is to certify that the above notice of a Regular Called Council Meeting was posted on the front window of the City Hall of the City of Bay City, Texas on **Friday, September 18, 2020 before 6:00 p.m.** Any questions concerning the above items, please contact Mayor Robert K. Nelson at (979) 245-2137.

CITY OF BAY CITY

MINUTES • SEPTEMBER 08, 2020

**COUNCIL
CHAMBERS | 1901
5th Street**

City Council Workshop

4:00 PM

**1901 5TH STREET
BAY CITY TX,77414**



Mayor

Robert K. Nelson

Councilman

William Cornman

Mayor Pro Tem

Jason W. Childers

Councilman

Brent P. Marceaux

Councilwoman

Becca Slitz

Councilwoman

Julie Estlinbaum

Bay City is committed to developing and enhancing the long-term prosperity, sustainability, and health of the community.

CALL TO ORDER

Mayor Robert K. Nelson called the meeting to order at 4:13 pm

CERTIFICATION OF QUORUM
PRESENT

Mayor Robert K. Nelson
 Mayor Pro Tem Jason W. Childers
 Councilman William Cornman
 Councilman Brent P. Marceaux
 Councilwoman Julie Estlinbaum
 Councilwoman Becca Sitz

PUBLIC COMMENTS

There were no public comments.

REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND / OR APPROVAL
1. REVIEW AND DISCUSS THE CITY'S FACILITY USE AGREEMENT FOR THE SERVICE CENTER (USO). Shawn Blackburn, Parks & Recreation Director

Shawn Blackburn, Parks & Recreation Director reviewed the deed from 2009 regarding restrictions. Mr. Blackburn stated that they were hoping to offset costs but the Deed will need to be modified. Mr. Blackburn added that the City will need to work with family that deeded the property with restrictions. Mr Blackburn presented a proposed new facility use agreement based on Civic Center agreement. Anne Marie Odefy spoke with Mr. Runnels, who was happy to get a phone call to discuss rather than a letter. She explained the new proposal and that Mr. Runnels is willing to meet with the City. Ms. Odefy thinks making him a part of the process helps with the relations. Hoping to meet this week. Councilman Marceaux is concerned is it opens up a competition with other entities (VFW, KC, Eagles, etc.). Mayor Pro Tem Childers believes if we are higher than those it will put us behind them. Councilman Marceaux requested a rate sheet from those organizations for assurance that we do not undercut them. Councilwoman Estlinbaum stated that she never thought of them as competition, until brought up, something to take in consideration. Councilwoman Sitz wants to keep our prices above the other non-profits. Will bring back for discussion after meeting with the family.

2. REVIEW AND DISCUSS THE CITY OF BAY CITY'S PROPOSED FEE ORDINANCE CHANGES TO BE EFFECTIVE OCTOBER 2, 2020. Scotty Jones, Finance Director

Scotty presented the proposed fee schedule and items added or changed. Variance filling fee was reviewed and Mayor Pro Tem Childers stated was a bit steep, he doesn't want people to skip us due to cost. Barry Calhoun, Public Works Director,

stated that it is to encourage to follow through what we have in place rather than ask for a variance. Councilman Marceaux stated that we want to be friendly but keep the pretenders from overly requesting variances. Council compromised at \$75. Councilman Cornman commented on Airport costs, thinks we should do that James Mason has recommended. Shawna Burkhart stated that James is getting fee rates from other airports and we are in the process. Mayor Pro Tem Childers would like clarification on Airport late payment fees on past due days. Municipal Courts security fees based on Texas Legislation. In Waste Management, HHW .94 is monthly. Mayor Pro Tem Childers wants to know if we are in line with other cities on taps in utilities. Barry Calhoun, Public Works Director, stated that they looked at cost for the City to put in meter, mains, which is more than tapping charges. Councilman Cornman said for a development we could always offer an incentive. Scotty Jones provided a summary of billing of water/garbage/sewer. Shawna Burkhart added that TCQ requires conservation pricing. Councilman Cornman requested more footnotes in financial reports.

3. REVIEW AND DISCUSS THE HOUSEHOLD HAZARDOUS WASTE AGREEMENT AND GIVE STAFF DIRECTION.

Mayor Nelson opened discussions. Krystal Mason provided monthly HHW collection statistics. She has had no complaints and only one missed pickup which was resolved quickly. Councilwoman Estlinbaum thinks its a great service. Mayor Nelson added that the County will not be able to have their Hazardous Waste Collection this year so he thinks the numbers will go up. Shawna Burkhart, City Manager, asked if we want to forward the cost to residents at 100%. Councilman Cornman stated s we should keep the program and City cover cost. Mayor Pro Tem Childers recommends more advertisement. Council will revisit in 6 months. Mayor Nelson requested to see statistics from other cities to see if slow start is typical.

ADJOURNMENT

Motion made by Councilman Marceaux to adjourn, Seconded by Mayor Pro Tem Childers. Voting Yea: Mayor Nelson, Mayor Pro Tem Childers, Councilman Cornman, Councilman Marceaux, Councilwoman Estlinbaum, Councilwoman Sitz. Motion carried and Council adjourned at 5:39 pm.

PASSED AND APPROVED, this ____ day of _____, 2020.

ROBERT K. NELSON, MAYOR
CITY OF BAY CITY, TEXAS

JEANNA THOMPSON
CITY SECRETARY

CITY OF BAY CITY
MINUTES • SEPTEMBER 8, 2020

**COUNCIL
CHAMBERS | 1901
5th Street**

Regular Council Meeting

6:00 PM

**1901 5TH STREET
BAY CITY TX,77414**



Mayor

Robert K. Nelson

Councilman

William Cornman

Councilman

Brent P. Marceaux

Councilwoman

Becca Slitz

Mayor Pro Tem

Jason W. Childers

Councilwoman

Julie Estlinbaum

Bay City is committed to developing and enhancing the long-term prosperity, sustainability, and health of the community.

CALL TO ORDER

Mayor Robert K. Nelson called the meeting to order at 6:04pm.

INVOCATION & PLEDGE

Texas State Flag Pledge: *"Honor The Texas Flag; I Pledge Allegiance To Thee, Texas, One State Under God, One And Indivisible."*

Councilwoman Julie Estlinbaum

CERTIFICATION OF QUORUM**PRESENT**

Mayor Robert K. Nelson
Mayor Pro Tem Jason W. Childers
Councilman William Cornman
Councilman Brent P. Marceaux
Councilwoman Becca Sitz
Councilwoman Julie Estlinbaum

MISSION STATEMENT

The City of Bay City is a community that fosters future economic growth, strives to deliver superior municipal services, invests in quality of life initiatives and is the gateway to the great outdoors. We encourage access to our unique historical and eco-cultural resources while maintaining our small-town Texas charm.

Councilwoman Julie Estlinbaum

APPROVAL OF AGENDA

Motion made by Mayor Pro Tem Childers to approve the agenda, Seconded by Councilman Marceaux.

Voting Yea: Mayor Nelson, Mayor Pro Tem Childers, Councilman Cornman, Councilman Marceaux, Councilwoman Sitz, Councilwoman Estlinbaum. Motion carried.

PUBLIC COMMENTS

State Law prohibits any deliberation of or decisions regarding items presented in public comments. City Council may only make a statement of specific factual information given in response to the inquiry; recite an existing policy; or request staff places the item on an agenda for a subsequent meeting.

There were no public comments.

CONSENT AGENDA ITEMS FOR CONSIDERATION AND/OR APPROVAL

Motion made by Councilwoman Estlinbaum to approve consent agenda items, Seconded by Councilman Cornman. Voting Yea: Mayor Nelson, Mayor Pro Tem Childers, Councilman Marceaux, Councilwoman Sitz, Councilwoman Estlinbaum. Motion carried.

1. **DISCUSS, CONSIDER, AND TAKE NECESSARY ACTION TO RATIFY WORK ORDER #5 BETWEEN THE CITY OF BAY CITY, TEXAS AND CIVIL PE'S FOR PROFESSIONAL SERVICES RELATED TO THE CONSTRUCTION MANAGEMENT OF THE NEW ROW E HANGER AT THE BAY CITY REGIONAL AIRPORT.**
2. **MINUTES OF SPECIAL CALLED MEETING ON AUGUST 19, 2020**
3. **MINUTES OF REGULAR COUNCIL MEETING ON AUGUST 25, 2020**
4. **MINUTES OF SPECIAL CALLED MEETING ON SEPTEMBER 1, 2020 .**

REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL**5. PRESENTATION ~ FINANCE TRANSPARENCY AWARD**

Scotty Jones introduced Jennifer Leverett who actively went out for the award. Ms. Leverett reviewed requirements to obtain a Finance Transparency Award. City Council, Mayor, City Manager presented award and photograph taken of them with award and Finance Director, Jennifer Leverett.

6. BUDGET ~ DISCUSS, CONSIDER AND/OR APPROVE BUDGET AMENDMENTS FOR THE BAY CITY COMMUNITY DEVELOPMENT CORPORATION AS OF JULY 27, 2020.

Motion made by Councilwoman Estlinbaum to approve the Budget Amendment for the Bay City Community Development Corporation, Seconded by Councilwoman Sitz. Voting Yea: Mayor Nelson, Mayor Pro Tem Childers, Councilman Cornman, Councilman Marceaux, Councilwoman Sitz, Councilwoman Estlinbaum. Motion carried,

7. BUDGET ~ DISCUSS, CONSIDER, AND/OR APPROVE THE BAY CITY COMMUNITY DEVELOPMENT CORPORATION'S BUDGET FOR FISCAL YEAR 2021.

Motion made by Mayor Pro Tem Childers to approve the Bay City Community Development Corporation's Budget for fiscal year 2021, Seconded by Councilwoman Sitz.

Voting Yea: Mayor Nelson, Mayor Pro Tem Childers, Councilman Cornman, Councilman Marceaux, Councilwoman Sitz, Councilwoman Estlinbaum. Motion

carried.

8. RESOLUTION ~ DISCUSS, CONSIDER AND/OR APPROVE A RESOLUTION OF THE CITY OF BAY CITY, TEXAS ADOPTING THE CITY OF BAY CITY FIVE YEAR CAPITAL IMPROVEMENT PROGRAM.

Motion made by Mayor Pro Tem Childers to approve the resolution adopting the City of Bay City Five Year Capital Improvement Program, Seconded by Councilwoman Estlinbaum. Voting Yea: Mayor Nelson, Mayor Pro Tem Childers, Councilman Cornman, Councilman Marceaux, Councilwoman Sitz, Councilwoman Estlinbaum. Motion carried.

9. ORDINANCE ~ AN ORDINANCE ADOPTING AN OPERATING BUDGET FOR THE CITY OF BAY CITY, TEXAS FOR FISCAL YEAR 2021 AND ALL DESIGNATED, SPECIFIED, NOTED, AND INDICATED LEVIES, RATES, RESERVES, REVENUE PROVISIONS, AND PLANNED EXPENDITURE INHERENT, EXPRESSED, AND INCLUDED THEREIN; PROVIDING FOR A CUMULATIVE CLAUSE: PROVIDING FOR SEVERABILITY: AND PROVIDING FOR AN EFFECTIVE DATE.

Motion made by Councilwoman Estlinbaum to approve the the Ordinance adopting an Operating Budget for the City of Bay City, Texas for fiscal year 2021. Second by Councilwoman Becca Sitz. Voting Yea: Mayor Nelson, Mayor Pro Tem Childers, Councilman Cornman, Councilman Marceaux, Councilwoman Sitz, Councilwoman Estlinbaum. Council was polled, all voting "yea". Motion carried.

10. BUDGET ~ CONSIDER AND/OR APPROVE A MOTION TO RATIFY THE PROPERTY TAX INCREASE REFLECTED IN THE BUDGET FOR THE CITY OF BAY CITY FISCAL YEAR 2021.

Motion made by Mayor Pro Tem Childers to ratify the property tax increase reflected in the budget for fiscal year 2021, Seconded by Councilwoman Estlinbaum. Voting Yea: Mayor Nelson, Mayor Pro Tem Childers, Councilman Cornman, Councilman Marceaux, Councilwoman Sitz, Councilwoman Estlinbaum. Motion carried.

11. ORDINANCE ~ AN ORDINANCE ADOPTING THE TAX RATE OF \$0.65500 PER \$100.00 OF ASSESSED VALUATION FOR THE CITY OF BAY CITY, TEXAS, FOR THE PURPOSE OF PAYING THE CURRENT EXPENSES OF THE CITY FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2021, LEVYING A MAINTENANCE AND OPERATIONS RATE OF \$.48212 AND FOR THE FURTHER PURPOSE OF CREATING A SINKING FUND TO RETIRE THE PRINCIPAL AND INTEREST OF THE BOND INDEBTEDNESS OF THE CITY LEVYING A DEBT SERVICE RATE OF

\$.17288; PROVIDING FOR A LIEN ON ALL REAL AND PERSONAL PROPERTY TO SECURE PAYMENT OF TAXES DUE THEREON; PROVIDING A SEVERABILITY CLAUSE HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Motion made by Mayor Pro Tem Childers moved that the property tax rate be increased by the adoption of a tax rate of \$.6550, which is effectively a 2.65 percent increase in the tax rate, Seconded by Councilwoman Estlinbaum.

Voting Yea: Mayor Nelson, Mayor Pro Tem Childers, Councilman Cornman, Councilman Marceaux, Councilwoman Sitz, Councilwoman Estlinbaum. Council was polled, all voting "yea". Motion carried.

- 12. ORDINANCE ~ DISCUSS, CONSIDER AND/OR APPROVE AN ORDINANCE OF THE CITY OF BAY CITY, TEXAS, ADOPTING A FEE SCHEDULE ATTACHED HERETO AS EXHIBIT "A" AND LABELED "APPENDIX B" TO BE ADDED TO THE CODE OF ORDINANCES OF THE CITY OF BAY CITY, TEXAS; ADOPTING FEES AND CHARGES FOR VARIOUS CITY SERVICES AND CONSOLIDATING THOSE FEES AND CHARGES FOR CONVENIENCE; PROVIDING FOR REPEAL; PROVIDING FOR RATIFICATION; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

Motion made by Councilman Cornman to table the Fee Ordinance until September 22nd, Seconded by Councilwoman Sitz. Voting Yea: Mayor Nelson, Mayor Pro Tem Childers, Councilman Cornman, Councilman Marceaux, Councilwoman Sitz, Councilwoman Estlinbaum. Motion carried.

- 13. CONTRACT ~ DISCUSS, CONSIDER AND/OR APPROVE EXTENDING THE CONTRACT WITH INTERNATIONAL BANK OF COMMERCE (IBC).**

Motion made by Councilwoman Estlinbaum to approve extending the contract with International Bank of Commerce, Seconded by Mayor Pro Tem Childers. Voting Yea: Mayor Nelson, Mayor Pro Tem Childers, Councilman Cornman, Councilman Marceaux, Councilwoman Sitz, Councilwoman Estlinbaum. Motion carried.

- 14. ELECTION ~ DISCUSS, CONSIDER AND/OR APPROVE THE AMENDED ORDER OF GENERAL ELECTION.**

Motion made by Councilman Marceaux to approve the Amended Order of Election, Seconded by Councilman Cornman. Voting Yea: Mayor Nelson, Mayor Pro Tem Childers, Councilman Cornman, Councilman Marceaux, Councilwoman Sitz, Councilwoman Estlinbaum. Motion carried.

CLOSED / EXECUTIVE SESSION

Mayor Nelson adjourned the regular session at 6:35pm and Council went into an executive session.

- 15. CLOSED MEETING TO DISCUSS PERSONNEL MATTERS IN ACCORDANCE WITH TITLE 5, SECTION 551.074 OF THE TEXAS GOVERNMENT CODE (TO DISCUSS APPOINTMENT, EMPLOYMENT, EVALUATION, RESPONSIBILITIES AND DUTIES, REASSIGNMENT, DISCIPLINE OR DISMISSAL OF AN OFFICER OR EMPLOYEE, OR TO HEAR A COMPLAINT OR CHARGE AGAINST AN OFFICER OR EMPLOYEE: CITY MANAGER.

OPEN SESSION

Discuss, consider and/or take action on item(s) listed in Executive/Closed Session, (if any).

Council adjourned the Executive session and reconvened the Regular session at 7:24pm. Council took not action on the item.

ITEMS / COMMENTS & MAYOR AND COUNCIL MEMBERS

Councilman Marceaux grateful the Bay City Black Cats are back. Councilman Cornmen stated that he would like an update on Planning Commission and fire marshal. Shawna Burkhart replied that there is a Planning Commission meeting on September 17th and it will be public. Councilman Cornman asked for email when planning meeting is. He said we are missing a lot of community events. Councilman Cornman recommended that Marissa get updates with an informal process to gather information. Councilman Cornman asked about Siemen, Anne Marie Onefey replied that getting letter and contracts together. Councilwoman Sitz, in conjunction with VFW, doing flags, we are fininshed with financial aspects, have a boy scout to assist working on his badge, getting lights fixed on streets. Mayor Nelson is excited about projects and accomplishments.

ADJOURNMENT

Motion made by Councilman Marceaux to adjourn, Seconded by Councilwoman Sitz. Voting Yea: Mayor Nelson, Mayor Pro Tem Childers, Councilman Cornman, Councilman Marceaux, Councilwoman Sitz, Councilwoman Estlinbaum. Motion carried and Council adjourned at 7:31pm.

PASSED AND APPROVED, this ____ day of _____, 2020.

ROBERT K. NELSON, MAYOR
CITY OF BAY CITY, TEXAS

JEANNA THOMPSON
CITY SECRETARY

CITY OF BAY CITY
MINUTES • SEPTEMBER 14, 2020

**COUNCIL
CHAMBERS | 1901
5th Street**

City Council Special Meeting

5:30 PM

**1901 5TH STREET
BAY CITY TX,77414**



Mayor

Robert K. Nelson

Councilman

William Cornman

Councilman

Brent P. Marceaux

Councilwoman

Becca Slitz

Mayor Pro Tem

Jason W. Childers

Councilwoman

Julie Estlinbaum

Bay City is committed to developing and enhancing the long-term prosperity, sustainability, and health of the community.

CALL TO ORDER

Mayor Robert K. Nelson called the meeting to order at 5:30pm.

CERTIFICATION OF QUORUM**APPROVAL OF AGENDA**

Motion made by Mayor Pro Tem Childers to approve the agenda, Seconded by Councilwoman Estlinbaum. Voting Yea: Mayor Nelson, Mayor Pro Tem Childers, Councilman Cornman, Councilman Marceaux, Councilwoman Estlinbaum. Motion passed.

REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL**DISCUSS, CONSIDER AND/OR DIRECT STAFF ON DEVELOPMENT OF A PERSONNEL POLICY REGARDING LEAVE COMPENSATION DUE TO COVID-19 RELATED ABSENTEEISM.**

Mayor Nelson asked for public comments. There were no public comments.

Council adjourned the regular session at 5:32 pm and went into a closed session to consult with attorney at 5:32pm. Council re-convened at 6:25pm.

Council took no action.

ADJOURNMENT

Motion made by Councilman Marceaux to adjourn, Seconded by Mayor Pro Tem Childers.

Voting Yea: Mayor Nelson, Mayor Pro Tem Childers, Councilman Cornman, Councilman Marceaux, Councilwoman Estlinbaum. Motion carried and Council adjourned at 6:25 pm.

PASSED AND APPROVED, this ____ day of _____, 2020.

ROBERT K. NELSON, MAYOR
CITY OF BAY CITY, TEXAS

JEANNA THOMPSON
CITY SECRETARY

ORDINANCE~ DISCUSS, CONSIDER AND/OR APPROVE AN ORDINANCE OF THE CITY OF BAY CITY, TEXAS, ADOPTING A FEE SCHEDULE ATTACHED HERETO AS EXHIBIT “A” AND LABELED “APPENDIX B” TO BE ADDED TO THE CODE OF ORDINANCES OF THE CITY OF BAY CITY, TEXAS; ADOPTING FEES AND CHARGES FOR VARIOUS CITY SERVICES AND CONSOLIDATING THOSE FEES AND CHARGES FOR CONVENIENCE; PROVIDING FOR REPEAL; PROVIDING FOR RATIFICATION; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.



EXECUTIVE SUMMARY

APPENDIX B- FEE SCHEDULE

Reviewed with City Council on September 8, 2020—delayed passing fee ordinance until September 22, 2020 in order to revise a few sections as recommended by City Council:

Chapter 2- Administration
 Chapter 18- Aviation
 Chapter 22- Building & Building Regulations
 Chapter 42- Fire Prevention and Protection
 Chapter 58- Municipal Court
 Chapter 70- Parks and Recreation
 Chapter 90- Solid Waste
 Chapter 114- Utilities

Updated Revised Sections since September 8 meeting:

Chapter 2- Administration- *Variance filing fee changing from \$150.00 to \$75.00*
 Chapter 18- Aviation- *Clarified late payment fee.*
 Chapter 70- Parks and Recreation- *Removed fees related to Service Center to provide time to meet with John S. Runnels III & to gather research requested by City Council.*
 Chapter 90- Solid Waste- *removed HHW fee; added late fee to match Chapter 114 Utilities.*
 Chapter 114- Utilities- *Clarified late payment fee.*

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BAY CITY, TEXAS, ADOPTING A FEE SCHEDULE ATTACHED HERETO AS EXHIBIT “A” AND LABELED “APPENDIX B” TO BE ADDED TO THE CODE OF ORDINANCES OF THE CITY OF BAY CITY, TEXAS; ADOPTING FEES AND CHARGES FOR VARIOUS CITY SERVICES AND CONSOLIDATING THOSE FEES AND CHARGES FOR CONVENIENCE; PROVIDING FOR REPEAL; PROVIDING FOR RATIFICATION; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bay City, Texas, (“City”) has adopted numerous ordinances that provide for fees and charges for various city services; and

WHEREAS, the City has determined that it would be convenient to consolidate those fees and charges into one ordinance that can be reviewed and amended as needed from time to time; and

WHEREAS, the City has adopted a budget for the 2021 fiscal year that incorporates these fees and charges specified herein on September 8, 2020; and

WHEREAS, the City has determined that the fees and charges specified herein are reasonable, necessary, fair, and designed to fund the various activities to which they pertain; and

WHEREAS, the City has determined that the fees and charges specified herein will promote the health, safety, and welfare of City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS:

Section 1. The facts and recitations contained in the preamble to this Ordinance are true and correct and incorporated herein for all purposes.

Section 2. *Fees Schedule adopted.* The City hereby adopts the Fee Schedule attached hereto as Exhibit “A” and labeled “Appendix B” to be added to the City of Bay City, Texas, Code of Ordinances and imposes the fees and charges set forth therein upon the various services to which they pertain. These fees and charges shall be collected by the City in accordance with the various City ordinances that more particularly describe each such fee or charge.

Section 3. *Repeal.* All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

Section 4. *Ratification.* The City ratifies any past action taken regarding charging of fees.

Section 5. *Penalty.* Any person who violates or causes, allows, or permits another to violate any provision of this ordinance, rule, or police regulation of the city shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine or penalty not to exceed five hundred dollars (\$500.00). Each occurrence of any violation of this ordinance, rule, or police regulation shall constitute a separate offense. Each day on which any such violation of this ordinance, rule, or police regulation occurs shall constitute a separate offense.

Section 6. *Severability.* In the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Bay City, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 7. *Effective Date.* This Ordinance shall be effective on October 1, 2020 and may be published as required by law.

PASSED, APPROVED, AND ADOPTED on this 22nd day of September 2020.

Robert K. Nelson, Mayor
City of Bay City

ATTEST:

APPROVED AS TO FORM:

Jeanna Thompson, City Secretary
City of Bay City

Anne Marie Odefey, City Attorney

<u>Council Member:</u>	<u>Voted Aye</u>	<u>Voted No</u>	<u>Absent</u>
Robert K. Nelson Mayor	_____	_____	_____
Julie L. Estlinbaum	_____	_____	_____
Bill Cornman	_____	_____	_____
Jason Childers, Mayor Pro Tem	_____	_____	_____
Becca Sitz	_____	_____	_____
Brent Marceaux	_____	_____	_____

APPENDIX B - FEE SCHEDULE⁽¹⁾

Section Number	Subject	Fee Amount
Chapter 2 - Administration		
2-53(c)	Fine for disrupting council meetings	\$25.00 to \$100.00 per offense
2-164	Return Check Fee	\$30.00
2-216	Request for records fee	\$0.10 per page (standard size) \$0.15 per page (legal size)
2-268	Variance filing application fee	\$25.00 (proposed \$50.00) \$150.75.00
Chapter 10 - Amusements and Entertainments		
Sexually oriented business permit		
10-39(a)	Application fee	\$500.00
10-39(b)	Renewal - Adult service provider permit	\$100.00
10-39(c)	Renewal - Business manager permit	\$150.00
10-39(d)	Duplicate/copy - License, permit, identification card	\$10.00
10-39(e)	Fingerprinting	\$25.00
Chapter 14 - Animals		
14-	Animal impound	\$25.00 first day, \$10.00 each additional day
14-44	Animal quarantine - Rabies	\$30.00 Processing fee \$15.00 per day
Chapter 18 - Aviation		

18-6(a)	Aerial Advertising - City limits permit	\$15.00 per flight
18-6(a)	Aerial Advertising - City limits, 7-day permit	\$25.00
18-	Aerial Applicator Operating Permit	\$500.00 per aircraft (30-day period) \$250.00 for each additional aircraft
18-135	Fuel Flowage Fee	\$0.15 per gallon
<i>Daily Tie Down Fees</i>		
18-	Single Engine	\$10.00
18-	Twin Engine	\$20.00
18-	Turbo/Jet Engine	\$30.00
<i>Monthly Tie Down Fees</i> First calendar day free WITH fuel purchase. Tie down fees are calculated on the calendar day. (Example: "Calendar Day" 1 minute to 24 hours equals 1 calendar day.)		
18-	Single Engine	\$100.00
18-	Twin Engine	\$200.00
18-	Turbo/Jet Engine	\$300.00
No discount offered with purchase of fuel. Tie down fees are calculated on the calendar day.		
<i>Main Hangar Daily Fees</i>		
18-	Single Engine	\$25.00
18-	Twin Engine	\$50.00
18-	Turbo/Jet Engine	\$100.00
18-	T Hangar Monthly Fee	\$185.00 per month with a \$185.00 Deposit

18-	End-Cap Monthly Fee	\$55.00 per month
<i>Main Hangar Monthly Fees</i>		
18-	Single Engine	\$225.00
18-	Twin Engine	\$300.00
18-	Turbo Prop	\$350.00
18-	Jet Engine	\$450.00
18-	Deposit	Equal to one month's rent
18-	Late Payment Fee – The late payment fee is applied to charges not paid by the tenth day after the statement due date.	\$50.00
<i>Ramp Fees</i>		
18-	Single Engine	\$10.00
18-	Twin Engine	\$20.00
18-	Turbo/Jet Engine	\$30.00
Customers using our ramp to drop off or pick up passengers and purchasing aviation fuel are not charged a ramp use fee. All others will be charged a ramp fee on the calendar day.		
18-	Courtesy Vehicle for Fly-in visitors w/aviation fuel purchase	First 2 hours: No charge; then \$15.00/hour
	Courtesy Vehicle for Fly-in visitors w/out aviation fuel purchase	\$20.00/hour
	(a) Fly in visitors with no fuel purchase: A surcharge of \$20.00 will be charged regardless of how much fuel was used in the vehicle, if the vehicle is returned without the fuel being replaced.	

	(b) The overnight use of the vehicle may be approved at the cost of a flat rate fee of \$100.00 (after 5:00 p.m. until 8:00 a.m.). The charges as stated above will then apply between the hours of 8:00 a.m. to 5:00 p.m.	
18-	After Hour's Services	\$55.00/hour (2-hour minimum)
18-	Fuel Service Fees	40 cents per gallon of fuel
18-	Fuel additive	.05 cents per gallon plus posted fuel price
Chapter 22 - Building and Building Regulations		
22-50	Plan Review Fee	50% of the building permit fee
	Residential New Construction Building Permit Fees	
	0—1,500 square footage (sf)	\$785.00
22-50	1,501—10,000 sf	\$785.00 + \$0.35/sf for additional area over 1,500 sf
22-50	10,000 sf and up	\$3,760.00 + \$0.15/sf for additional are over 10,000 sf
	Residential Alteration/Addition Building Permit Fees	
22-50	Trade Permits (building, mechanical, electrical, plumbing, fuels gas, etc.)	\$100.00 per trade
22-50	Re-roof	\$50.00
22-50	Commercial Building Permit Fees	
	Valuation: \$1,000.00 or less	\$25.00
	Valuation: \$1,001.00 to \$50,000.00	\$25.00 for the first \$1,000.00 + \$5.50 <u>\$7.00</u> for each additional \$1,000.00 fraction thereof

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	Valuation: \$50,001.00 to \$100,000.00	\$289.50 for the first \$50,000.00 + \$4.50 <u>\$6.00</u> for each additional \$1,000.00 fraction thereof
	Valuation: \$100,001.00 to \$500,000.00	\$514.50 for the first \$100,000.00 + \$3.50 <u>\$5.00</u> for each additional \$1,000.00 fraction thereof
	Valuation: \$500,001 and up	\$1,914.50 for the first \$500,000.00 + \$2.50 <u>\$4.00</u> for each additional \$1,000.00 fraction thereof
22-50	Demolition <u>and Utility Termination</u> Permit	\$50.00 <u>\$150.00</u>
22-50	Utility Termination Permit	\$125.00
22-50	Re-inspection Fee	\$30.00
22-50	After-hours inspection Fee	\$50.00
22-50	Flood Zone Confirmation	\$25.00
22-50	Permit Renewal/Extension prior to expiration	50% of original permit fee
22-50	Permit Renewal after Expiration	100% of original permit fee
22-50	Work prior to issuance of permit	200% of original permit fee
22-50	New Construction Certificate of Occupancy	No Charge
22-50	Certificate of Occupancy/Change in Ownership	\$150.00
22-50	Certificate of Occupancy/Change in Name	\$150.00
22-50	Temporary Certificate of Occupancy (TCO)	\$100.00
22-50	Copy of Certificate of Occupancy	\$10.00

22-50	Certificate of Occupancy/Tenant Space (no work)	\$150.00
22-50	Life Safety Inspection (foster homes, etc.)	\$150.00
22-50	Storage of Impounded Sign	\$25.00 per sign
22-163	Residential Electrical Permit Fee	\$25.00
22-163	Commercial Electrical Permit Fee	Minimum \$25.00 based on valuation of project
22-297	Residential Plumbing Permit Fee	\$25.00
22-297	Commercial Plumbing Permit Fee	Minimum \$25.00 based on valuation of project
22-383	Residential Mechanical Permit Fee	\$25.00
22-383	Commercial Mechanical Permit Fee	Minimum \$25.00 based on valuation of project
22-465	Moving Permit (Building or structure)	\$50.00
22-502	House Moving License	\$100.00 per year
Chapter 26 - Businesses		
26-33(d)	Mobile Food Establishment Fee	\$100.00 per year
26-56(a)	Massage License Application Fee	\$300.00 per year
26-57	Massage Business permit	\$200.00 per year
26-61	Multiple massage establishments license fee	\$100.00
Chapter 42 - Fire Prevention and Protection		

42-77	Sprinkler Systems (Valuation based on construction valuation for project)	Based on 3rd party contract fees
	Plan Review Services	Based on 3rd party contract fees
42-77	Fire Alarm Systems (Valuation based on construction valuation for project)	Based on 3rd party contract fees
42-77	Annual Fire Inspection	\$157.50 <u>\$150.00</u>
42-77	Fire Certificate of Occupancy Inspection	\$157.50 <u>\$150.00</u> per hour, per location
42-77	Fire Re-inspection	\$157.50 <u>\$150.00</u>
42-81(1)	Additional inspections	\$157.50 <u>\$150.00</u> per location
42-81(2)	Fire certificate of occupancy	\$157.50 <u>\$150.00</u>
Chapter 58 - Municipal Court		
58-48	Special expense for issuance and service of arrest warrant	\$25.00
58-49	Special expense for driving safety course	\$10.00 (not to exceed)
58-50	Special expense for teen court program	\$20.00 (not to exceed)
58-51	Special expense for delinquent fines	Fee shall be the lesser of 20% of the amount of the fine or \$50.00
58-76(a)	Security fee charged for cost of court (Building Security Fund) <u>Municipal Court Building Security Fund</u>	\$3.00 <u>4.90</u> per misdemeanor offense
58-96(1)	Juvenile case manager fee <u>Juvenile Case Manager Fund</u>	\$5.00 (not to exceed) <u>per misdemeanor offense</u>
58-122(a)	Municipal Court Technology Fee <u>Fund</u>	\$4.00 <u>per misdemeanor offense</u>
Chapter 62 - Natural Resources		

62-7b	Drilling permit fee	\$2,500.00
62-7b	Re-entering plugged well to operate	\$2,500.00
62-7b	Amendment to permit	\$500.00
62-7b	Extension of permit	\$500.00
62-7b	Permit for seismic surveys	\$500.00
Chapter 66 - Offenses		
66-4(f)	Loitering fine	Not less than \$1.00 and not more than \$200.00
66-64(b)	Curfew Penalty fines	Not less than \$50.00 nor more than \$500.00
66-179(c)	Protesting Funerals Penalty Fine	Not to exceed \$500.00
Chapter 70 Parks and Recreation		
<u>70-XX</u>	<u>Return Check Fee</u>	<u>\$30.00</u>
	<u>Registration fee</u>	<u>\$5.00/reservation</u>
70-XX	Facility - Train Depot	\$100.00 200.00/day + \$100.00 Deposit
	Facility - Service Center	See separate approved schedule
	Pavilion - Amistad Park	\$50.00/day + \$50.00 Deposit
	Pavilion - Riverside Park	See Riverside Park section
	East Side Pavilion - LeTulle Park	\$100.00/day + \$50.00 Deposit
	West Side Pavilion - LeTulle Park	\$100.00/day + \$50.00 Deposit
	Lakeview Pavilion - LeTulle Park	\$150.00/day + \$100.00 Deposit
	Pavilion - Duncan Park	\$50.00/day + \$50.00 Deposit

	Sports Complex: Basketball Pavilion	\$25.00/hour + \$50.00 Deposit
	Sports Complex: Per Field	\$25.00/hour + \$75.00 Deposit
	Sports Complex: All three fields	\$70.00/hour + \$200.00 Deposit
	Sports Complex: All three fields including press box	\$85.00/hour + \$250.00 Deposit
	Sports Complex: All three fields including press box and concession stand	\$100.00/hour + \$300.00 Deposit
	Sports Complex: Concession Stand	\$15.00/hour + \$100.00 Deposit
	Other Baseball Fields: City Field or Joe Davis Field	\$20.00/hour + \$100.00 Deposit
	Football Field (Non YSA Use): Hardeman Football Field	\$15.00/hour + \$100.00 Deposit
	Park: Duncan Park	\$250.00/day + \$100.00 Deposit
	Park: Liberty Park	\$150.00/day + \$100.00 Deposit
	Pools: Admission	Adult - \$2.00/day Child (Under 18) - \$1.00/day
	Pools: Canopy	\$25.00/hour
	Pools: Lap Swim (16th Pool only)	\$1.00/day or \$10.00/month
	Pools: Season Passes	Individual - \$40.00/season Family of 5 - \$100.00/season
	Pool Rental (Limited times available)	\$250.00 (4 hours)
	Riverside Park: Admission	\$8.00/car or \$80.00 Yearly Pass
	Riverside Park: Pavilion	\$100.00/day plus \$50.00 Deposit (Up to 20 Cars included, then \$8.00 per car)

	Riverside Park: RV Full Hook Up (Water, Sewer, Electric)	\$35.00 Daily, \$210.00/Week, \$500.00/Month plus \$35.00 Deposit
	Wilderness Camping - RV or Tent (Electric & Water)	\$25.00 Daily, \$150.00/Week, \$350.00/Month plus \$25.00 Deposit
	Excess Vehicle Fee (Pertains to campers)	\$8.00 per Day
	Boat Launch Fee	\$2.00 per Day
	(a) Sports Complex: Press box is available at the discretion of Parks Director.	
	(b) Park rentals are limited in time availability.	
	(c) Renting an entire park area or pool have special restriction.	
	(d) Camping fees include 1 vehicle per site per day.	
Chapter 74 - Peddlers and Solicitors		
74-39(a)	License Permit fee	\$50.00 + \$5.00 administrative fee
	License permit fee - 12-month	\$70.00 + \$5.00 administrative fee
Chapter 82 - Police		
82-2	Copies of records fee	\$6.00 per document for certified copies
Chapter 86 - Secondhand Goods		
86-20(b)	Junkyard license fee	\$20.00
86-20(b)	Inspection renewal fee	\$10.00
Chapter 90 - Solid Waste		
90-28(3)	Residential Trash	\$21.04 21.42/month
	Residential - Extra Toter	\$10.53 10.72/month

Small Commercial	\$ 37.33 <u>38.00</u> /month
Small Commercial - Extra Toter	\$ 48.67 <u>49.00</u> /month
Large Commercial:	
2-Yard 1 time per week	\$ 59.44 <u>60.50</u> /month
2-Yard 2 times per week	\$ 119.87 <u>122.02</u> /month
2-Yard 3 times per week	\$ 178.54 <u>181.70</u> /month
2-Yard 4 times per week	\$ 235.39 <u>239.51</u> /month
2-Yard 5 times per week	\$ 290.34 <u>295.50</u> /month
2-Yard 6 times per week	\$ 349.75 <u>356.01</u> /month
3-Yard 1 time per week	\$ 83.78 <u>85.28</u> /month
3-Yard 2 times per week	\$ 167.66 <u>170.66</u> /month
3-Yard 3 times per week	\$ 248.83 <u>253.28</u> /month
3-Yard 4 times per week	\$ 327.28 <u>333.14</u> /month
3-Yard 5 times per week	\$ 403.03 <u>410.24</u> /month
3-Yard 6 times per week	\$ 485.65 <u>494.34</u> /month
4-Yard 1 time per week	\$ 103.63 <u>105.49</u> /month
4-Yard 2 times per week	\$ 206.42 <u>210.12</u> /month
4-Yard 3 times per week	\$ 305.64 <u>311.08</u> /month
4-Yard 4 times per week	\$ 401.24 <u>408.39</u> /month
4-Yard 5 times per week	\$ 493.18 <u>502.00</u> /month

4-Yard 6 times per week	\$596.89 <u>607.48</u> /month
6-Yard 1 time per week	\$143.31 <u>145.88</u> /month
6-Yard 2 times per week	\$283.96 <u>289.04</u> /month
6-Yard 3 times per week	\$419.22 <u>426.73</u> /month
6-Yard 4 times per week	\$549.06 <u>558.89</u> /month
6-Yard 5 times per week	\$673.48 <u>685.54</u> /month
6-Yard 6 times per week	\$814.02 <u>828.59</u> /month
8-Yard 1 time per week	\$173.94 <u>177.05</u> /month
8-Yard 2 times per week	\$343.19 <u>349.34</u> /month
8-Yard 3 times per week	\$505.73 <u>514.78</u> /month
8-Yard 4 times per week	\$660.81 <u>672.64</u> /month
8-Yard 5 times per week	\$808.68 <u>823.16</u> /month
8-Yard 6 times per week	\$942.19 <u>959.05</u> /month
Additional Haul - 2-Yard	\$19.82 <u>20.18</u> /month
Additional Haul - 3-Yard	\$27.96 <u>28.46</u> /month
Additional Haul - 4-Yard	\$34.57 <u>35.19</u> /month
Additional Haul - 6-Yard	\$47.81 <u>48.67</u> /month
Additional Haul - 8-Yard	\$58.04 <u>59.07</u> /month
Lock Fee - Installation (1-time fee)	\$75.00
Lock Fee	\$5.00/month

	Late Payment Fee– The late payment fee is applied to charges not paid by the fifth day after the statement due date.	10% of balance, or \$10.00, (whichever is greater)
(customers outside of city limits pay 1.5 times inside city limit rate)		
Chapter 94 - Streets, Sidewalks and Other Public Places		
94-204	Street Closure Application Fee	\$25.00
94-229(c)	Street Name Application Fee	\$100.00
Chapter 98 - Subdivisions		
<i>Platting Fees</i>		
98-42(b)	Land plan fee	\$200.00
98-42(c)	Construction plan review	\$200.00 for sites less than one acre \$300.00 for sites one to five acres 500.00 for sites greater than five acres
98-42(d)	Preliminary plat fees	\$200.00 for sites less than one acre \$350.00 for sites one to five acres \$500.00 for sites greater than five acres
98-42(e)	Final plat fees	\$300.00 + \$5.00 per lot
98-42(f)	Development plat fee	\$300.00 + \$10.00 per acre
98-42(g)	Minor plat/re-plat	\$150.00 + \$5.00 per lot
98-42(h)	Amended plat	\$100.00 per plat
98-42(j)	Alley/Easement abandonment fee	\$100.00 per application

98-42(k)	Mobile Home park plats	\$300.00 + \$5.00 per lot/stand
Chapter 99 - Downtown Bay City Land Development Code		
99-9	Penalty Fine	\$2,000.00
Chapter 102 - Taxation		
102-70(a)	Hotel - Motel Occupancy Tax Rate	\$2.00 or more per day
Chapter 106 - Telecommunications		
106-80	Penalty Fee	\$500.00 per day
Chapter 110 - Traffic and Vehicles		
	Penalty Fee	Not to exceed \$500.00
110-175	Impoundment of Vehicle	Not less than \$4.00 per day
110-185	Disabled parking zone penalty fine	Up to \$500.00 per day
	Penalty Fee	Not more than \$2,000.00
Chapter 114 - Utilities		
	Return Check Fee	\$30.00
114-22	<i>Water and Sewer Deposits</i>	
114-22(1)	Residential Customers Single-Family resident	\$150.00
114-22(1)	Small Business Commercial property with a 3.4-inch water or 4-inch sewer connection, or both	\$200.00
114-22(1)	Large Business Commercial property with a water	Up to 60-day average bill

	connection 1-inch or greater or sewer connection 6-inch or greater, or both	
114-22(1)	Multi Unit Multi units connected to one water meter	Up to 60-day average bill
114-22(1)	Commercial accounts Washaterias, carwashes, and other high volume users	Up to 60-day average bill
114-22(4a1)	Reconnection Fee: Upon disconnection at curb stop for non-payment	\$50.00
114-22(4a2)	Reconnection Fee: Upon meter removal	\$100.00
114-22(4a3)	Reconnection Fee: Upon locking meter	\$100.00
114-22(4b)	Residential: Required deposit (restoration of service due to non-payment)	\$50.00 per occurrence (not to exceed \$300.00)
114-22(4b)	Commercial: Required deposit (restoration of service due to non-payment)	\$50.00 per occurrence (not to exceed 90-day average)
114-26	Late payment Fee – The late payment fee is applied to charges not paid by the fifth day after the statement due date.	10% of balance, or \$10.00, (whichever is greater)
114-55	<i>Water Tapping Charges</i>	
114-55(a)	1-inch or less	\$1,250.00 (Includes cost of labor, parts, materials associated with the installation of the meter and actual tap to City main. Customer is responsible for all cost associated with extending utility lines.)
114-55(a)	1.5-inch or greater	Based on 3rd party contractor cost plus cost of meter and inspection fee (\$100.00) 15% of the total cost associated with actual tap to City main plus cost of the meter. Customer is

		<u>responsible for all cost associated with extending utility lines.</u>
<u>114-55 (a)</u>	<u>Inspection Fee – An inspection fee shall be assessed for each water tap and meter installed by third party and subsequently inspected by City personnel. Upon connection to the City system, the meter becomes the property of the City.</u>	<u>\$100.00</u>
114-57	<i>Connection Fees</i>	
114-57(1)	Connection Fee (<u>Activation Fee</u>) - New Service	\$15.00
114-57(2)	Connection Fee - Following Disconnect for non-payment	\$50.00
114-57(3)	Connection Fee - Tampering (turned on by customer following disconnect for non-payment)	\$100.00
114-57(3a)	Connection Fee - Tampering with damage to curb stop or meter box	\$150.00
114-57(3b)	Connection Fee - Tampering with damage to meter or register	Cost of equipment replacement plus tampering fee noted in 114-57(3)
114-57(4)	Connection Fee - After normal business hours	\$35.00
114-88	<i>Monthly Rate Schedule (Water)</i>	
Residential		
114-88	Base Charge 0—2,000 gallons 0.625 0.625 —10-inch meter	\$22.13 <u>\$24.10</u>
	<u>Base Charge 0—2,000 gallons</u> <u>0.75-inch meter</u>	<u>\$24.10</u>

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	<u>Base Charge 0—2,000 gallons 1-inch meter</u>	<u>\$30.20</u>
	<u>Base Charge 0—2,000 gallons 1.5-inch meter</u>	<u>\$60.30</u>
	<u>Base Charge 0—2,000 gallons 2-inch meter</u>	<u>\$96.50</u>
	<u>Base Charge 0—2,000 gallons 3-inch meter</u>	<u>\$181.00</u>
	<u>Base Charge 0—2,000 gallons 4-inch meter</u>	<u>\$302.00</u>
	<u>Base Charge 0—2,000 gallons 6-inch meter</u>	<u>\$603.00</u>
	<u>Base Charge 0—2,000 gallons 8-inch meter</u>	<u>\$987.00</u>
	<u>Base Charge 0—2,000 gallons 10-inch meter</u>	<u>\$1,565.00</u>

Volumetric Rate

114-88	2,001—5,000 Gallons	\$2.06 <u>1.80</u> per 1,000 gallons
114-88	5,001—10,000 Gallons	\$2.59 <u>3.15</u> per 1,000 gallons
114-88	Over 10,000 Gallons	\$3.11 <u>6.30</u> per 1,000 gallons

Non-Residential (Commercial),

Base Monthly Bill

114-88	0.625-inch meter	\$22.13 <u>24.10</u>
114-88	0.75-inch meter	\$22.13 <u>24.10</u>

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114-88	1-inch meter	\$27.67 <u>30.20</u>
114-88	1.5-inch meter	\$55.31 <u>60.30</u>
114-88	2-inch meter	\$88.49 <u>96.50</u>
114-88	4-inch meter	\$165.92 <u>181.00</u>
114-88	4-inch meter	\$276.54 <u>302.00</u>
114-88	6-inch meter	\$553.08 <u>603.00</u>
114-88	8-inch meter	\$884.92 <u>987.00</u>
114-88	10-inch meter	\$1,272.07 <u>1,565.00</u>
<i>Volumetric Rate</i>		
114-88	0-10,000 Gallons	\$2.59 <u>5.10</u> per 1,000 gallons
114-88	Over 10,000 Gallons	\$2.59 <u>5.10</u> per 1,000 gallons
Industrial		
<i>Base Monthly Bill</i>		
114-88	\$ 0.625-inch meter	\$22.13 <u>24.10</u>
114-88	0.75-inch meter	\$22.13 <u>24.10</u>
114-88	1-inch meter	\$27.67 <u>30.10</u>
114-88	1.5-inch meter	\$55.31 <u>60.30</u>
114-88	2-inch meter	\$88.49 <u>96.50</u>
114-88	4 3-inch meter	\$165.92 <u>181.00</u>
114-88	4-inch meter	\$276.54 <u>302.00</u>

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114-88	6-inch meter	\$553.08 <u>603.00</u>
114-88	8-inch meter	\$884.92 <u>987.00</u>
114-88	10-inch meter	\$1,272.07 <u>1,565.00</u>
Volumetric Rate		
114-88	0—900,000 Gallons	\$4.59 <u>5.28</u> per 1,000 gallons
114-88	900,001 to 4,500,000 Gallons	\$4.13 <u>6.45</u> per 1,000 gallons
114-88	Over 4,500,000 Gallons	\$3.67 <u>8.07</u> per 1,000 gallons
(customers outside of city limits pay 2x amount)		
Bulk Water		
(Metered Water)	Base Charge 0—2,000 gallons	\$75.00 <u>35.00</u>
114-88	2,001—10,000 gallons	2 times commercial rate per 1,000 gallons <u>\$5.10 per 1,000 gallons</u>
114-88	Over 10,000 gallons	2 times commercial rate per 1,000 gallons <u>\$5.10 per 1,000 gallons</u>
Article 4 Sewer and Sewer Surcharge Rates		
114-109	<i>Fees and Sewer Taps</i>	
114-109(1a)	4-inch connection or less	\$1,250.00 (Includes cost of labor, parts, materials associated with actual tap to City main. Customer is responsible for all cost associated with extending utility lines.)
114-109(1b)	Over 4-inch	15% of the total cost associated with actual tap to City main. Customer is responsible for all cost associated with extending utility

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		<u>lines. Based on 3rd party contractor plus inspection fee (\$100.00)</u>
<u>114-109</u>	<u>Inspection Fee – An inspection fee shall be assessed for each sewer tap installed by third party and subsequently inspected by City personnel.</u>	<u>\$100.00</u>
<u>114-109(2)55(b)</u>	Line Locate	\$200.00 Additional charges of \$50.00/hour after the first 4 hours
114-134	<i>Monthly Rate Schedule (Sewer)</i>	
<u>Residential</u>		
114-134	Base Charge 0—2,000 gallons 0.625 0-10 -inch meter	\$20.28 <u>\$22.80</u>
	<u>Base Charge 0—2,000 gallons 0.75-inch meter</u>	<u>\$22.80</u>
	<u>Base Charge 0—2,000 gallons 1-inch meter</u>	<u>\$34.10</u>
	<u>Base Charge 0—2,000 gallons 1.5-inch meter</u>	<u>\$64.60</u>
	<u>Base Charge 0—2,000 gallons 2-inch meter</u>	<u>\$101.00</u>
	<u>Base Charge 0—2,000 gallons 3-inch meter</u>	<u>\$199.00</u>
	<u>Base Charge 0—2,000 gallons 4-inch meter</u>	<u>\$370.00</u>
	<u>Base Charge 0—2,000 gallons 6-inch meter</u>	<u>\$766.00</u>

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	<u>Base Charge 0—2,000 gallons 8-inch meter</u>	<u>\$1,102.00</u>
	<u>Base Charge 0—2,000 gallons 10-inch meter</u>	<u>\$1,773.00</u>
114-212	Customer Service Inspector (CSI)	\$50.00 per hour (1 hour minimum)
114-205	Backflow Prevention Inspection	\$50.00 per hour (1 hour minimum)
Volumetric Rate		
114-134	2,001—5,000 Gallons	\$5.01 <u>5.70</u> per 1,000 gallons
114-134	5,001—10,000 Gallons	\$5.01 <u>6.27</u> per 1,000 gallons
114-134	Over 10,000 Gallons	\$5.01 <u>6.90</u> per 1,000 gallons
Non-Residential (Commercial)		
<i>Base Monthly Bill</i>		
114-134	0.625-inch meter	\$20.28 <u>22.80</u>
114-134	0.75-inch meter	\$20.28 <u>22.80</u>
114-134	1-inch meter	\$25.36 <u>34.10</u>
114-134	1.5-inch meter	\$5.69 <u>64.60</u>
114-134	2-inch meter	\$81.12 <u>101.00</u>
114-134	4 <u>3</u> -inch meter	\$152.10 <u>199.00</u>
114-134	4-inch meter	\$253.49 <u>370.00</u>
114-134	6-inch meter	\$507.00 <u>766.00</u>
114-134	8-inch meter	\$811.18 <u>1,102.00</u>

114-134	10-inch meter	\$4,166.07 <u>1,773.00</u>
<i>Volumetric Rate</i>		
114-134	0—10,000 Gallons	\$5.01 <u>5.10</u> per 1,000 gallons
114-134	Over 10,000 Gallons	\$5.01 <u>5.10</u> per 1,000 gallons
Industrial		
<i>Base Monthly Billing</i>		
	0.625-inch meter	\$20.28 <u>22.80</u>
	0.75-inch meter	\$20.28 <u>22.80</u>
	1-inch meter	\$25.36 <u>34.10</u>
	1.5-inch meter	\$50.69 <u>64.60</u>
	2-inch meter	\$81.12 <u>101.00</u>
	3-inch meter	\$152.10 <u>199.00</u>
	4-inch meter	\$253.49 <u>370.00</u>
	6-inch meter	\$507.09 <u>766.00</u>
	8-inch meter	\$811.18 <u>1,102.00</u>
	10-inch meter size	\$1,166.07 <u>1,773.00</u>
<i>Volumetric Rate</i>		
	0—900,000 Gallons	\$4.59 <u>4.00</u> per 1,000 gallons
	900,001 to 4,500,000 Gallons	\$4.13 <u>5.00</u> per 1,000 gallons
	Over 4,500,000 Gallons	\$3.67 <u>6.25</u> per 1,000 gallons

(customers outside of city limits pay 2x amount [for sections 114-88 and 114-134](#))

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114-135 (b)	Quantity cost capitol recovery fee (surcharge)		
Source Classification	Remarks	Quantity Variable Daily Sewage Flow - Gallons/Person	Capital Cost Recovery Rate
Municipality	Residential (3 persons)	$\times 100 \times \$2.06=$	\$618.00 per home
Subdivision	Residential (3 persons)	$\times 100 \times \$2.06=$	\$618.00 per home
Trailer park transient	\$2½ Persons per trailer	$\times 50 \times \$2.06=$	\$257.50 per home
Mobile home park	\$4 Persons per trailer	$\times 100 \times \$2.06=$	\$618.00 per home
Schools	Elementary, high (students)	$\times 15 \times \$2.06=$	\$ 30.90 per student
Recreation parks	Campers	$\times 40 \times \$2.06=$	\$ 82.40 per unit
	Boaters	$\times 5 \times \$2.06=$	\$ 10.30 per unit
	Swimmers	$\times 10 \times \$2.06=$	\$ 20.60 per person
Factory or office building	No showers (employees)	$\times 20 \times \$2.06 =$	\$ 41.20 per person
Factory	With showers (employees)	$\times 25 \times \$2.06 =$	\$ 51.50 per employee

Motor lodge	With toilet (units and bath)	$\times 50 \times \$2.06 =$	\$103.00 per unit
Hospitals	Per bed	$\times 200 \times \$2.06 =$	\$412.00 per bed
Nursing homes	Per bed	$\times 90 \times \$2.06 =$	\$185.40 per bed
Drive-in theater	Per car space	$\times 5 \times \$2.06 =$	\$ 10.30 per space
Restaurant	Per meal served	$\times 5 \times \$2.06 =$	\$ 10.30 per customer
Apartments	3 Persons	$\times 100 \times \$2.06 =$	\$618.00 per apartment
<u>114-212</u>	<u>Customer Service Inspector (CSI)</u>		<u>\$50.00 per hour (1 hour minimum)</u>
<u>114-305</u>	<u>Backflow Prevention Inspection</u>		<u>\$50.00 per hour (1 hour minimum)</u>

Section Number	Subject	Fee Amount
Chapter N/A - Bay City Public Library		
Overdue Materials (per day)	Books (unless specified)	\$0.15 per day
	Audios	\$0.50 per day
	DVDs	\$1.00 per day
	E-device	\$5.00 per day
	Games, Literacy Kits	\$2.00 per day
	NEW Books and ILL	\$0.25 per day

	NEW Audios and Lease Materials	\$1.00 per day
	NEW DVDs	\$2.00 per day
Max Overdue Fines	E-device	\$50.00
	All other materials	\$10.00
Library Cards	\$1 st Card	FREE
	Replacement card	\$3.00
Other Charges	Interlibrary Loan Shipping (ILL)	One-way postage
	Minor Damages	\$3.00 + partial processing fee (\$2.50)
Lost/Severe Damages	BCPL item	Cost of item + \$5.00 processing fee
	ILL	Cost assessed by lending library + \$5.00 processing fee
	E-devices	Varies based on item (up to replacement of entire unit) + \$5.00 processing fee
	Earphones	\$2.00
	USB	\$5.00
Services	Printing/Copies	\$0.15 per page (black & white)/\$.30 per page (color)
	Faxing	\$1.00 per page for 1—5 pages, \$0.50 for each subsequent page
	Laminating	\$2.00 per foot/\$1.00 for ID card size
Rentals	Multimedia Projector	\$30.00 per day
	Projector Screen	\$5.00 per day

Two fine reduction opportunities are provided each year - Spring and Fall/Winter (Food for Fines in conjunction with the Police Department Food Drive). Amnesty days are offered on occasion during National Library Week. This allows patrons two times per year to clear or reduce their amounts.

Chapter N/A - Civic Center

Fee Schedule with Room Dimensions	Rm #102: Diagonal Entrance/West Side (18' X 23')	\$100.00 + \$50.00 Deposit
	Rm #104: Small West Conference Room (20' X 23')	\$100.00 + \$50.00 Deposit
	Rm #106: Large West Conference Room (30' X 73')	\$300.00 + \$50.00 Deposit
	Rm #108: Catering Kitchen	\$200.00 + \$50.00 Deposit
	Rm #100: Main Exhibit Hall (100' X 120')	\$825.00 + \$200.00 Deposit
	Rm #103: Large East Conference Room (44' X 73')	\$375.00 + \$50.00 Deposit
	Rm #109: Small East Conference Room (20' X 30')	\$150.00 + \$50.00 Deposit
	Rm #107: Small East Conference Room (18' X 30')	\$150.00 + \$50.00 Deposit
	Rm #111: Harvest Room-South Side (20' X 30')	\$175.00 + \$50.00 Deposit
	Rm #113: Harvest Room-North Side (30' X 30')	\$175.00 + \$50.00 Deposit
	Chamber Corporate Boardroom (Availability determined by Chamber usage)	\$200.00/4 hours + \$50.00 Deposit
Combination Prices	Rooms 100, 103, 106 combined	\$1,400.00 + \$300.00 Deposit

	Entire Civic Center (excluding chamber offices)	\$1,600.00 + \$300.00 Deposit
(a) An individual can reserve the room the day before the event at half price of the rent fee, and have full access all day between 8:00 a.m.—12:00 a.m.		
(b) An individual can pay an \$80.00 hourly decorating fee to use the room the day before their event between the hours of 8:00 a.m.—4:00 p.m., as long as that room and date are available.		
(c) Failure to submit a floor plan before the deadline will result in a \$60.00 late fee. Any changes requested by the renter after the deadline will be subject to a \$60.00 change fee.		
Chapter 118 - Vehicles for Hire		
118-61(a)	Taxi Application fee	\$25.00
118-61(b)	Administrative Fee	\$5.00
118-61(c)	Taxi Franchise Fee	\$100.00 + \$25.00 per taxicab per year
118-63(b)	<i>Taxi rates and fees</i>	
118-63(b1)	Initial pickup	\$2.50
118-63(b2)	Each additional 1/12 mile	\$0.20
118-63(b3)	Each additional passenger	\$0.00
118-63(b4)	First piece free, each additional piece	\$0.00
118-63(b5)	Standby or waiting per ¼ hour	\$7.00
18-95	State Class C License Annual permit fee	\$20.00 per driver

([Ord. No. 1625, § 2\(Exh. A\), 9-27-2018](#) ; [Ord. No. 1633, § 2\(Exh. A\), 6-27-2019](#) ; [Ord. No. 1639, § 2\(Exh. A\), 9-12-2019](#))

Footnotes:

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Editor's note— Printed herein is the Fee Schedule of the City of Bay City, Texas, adopted as [Ordinance No. 1625, on Sept. 27, 2018](#).

DISCUSS, CONSIDER AND/OR APPROVE A RESOLUTION AUTHORIZING THE AWARD OF A CONTRACT FOR ADMINISTRATION SERVICES AND SOFT COSTS PROJECT MANAGEMENT SERVICES FOR THE HOME OWNER REHABILITATION ASSISTANCE PROGRAM.



EXECUTIVE SUMMARY

RESOLUTION TO AUTHORIZE ADMINISTRATIVE SERVICES RELATED TO THE CITY’S HOME PROGRAM

BACKGROUND: The City approved applying for federal grant funds through the Texas Department of Housing and Community Affairs in 2016. This grant is to assist lower income homeowners by rehabilitating or rebuilding their homes. The City currently has 5 households that have been approved for assistance. The City has 8 others in the pipeline pending environmental clearance.

It is time again to approve administrative services for this program.

FINANCIAL IMPLICATIONS: None (paid through grant dollars)

IMPACT ON COMMUNITY SUSTAINABILITY: This grant will assist our lower income homeowners while simultaneously enhancing the health, economic, and aesthetic quality of the community, thereby improving of life for our citizens.

RECOMMENDATION: 2 bids received; Staff recommends approval of the Resolution recommending GrantWorks, Inc. for administrative services

ATTACHMENTS: Resolution; Summary Rating by Firm

Summary of Request for Proposals for Administration Services- HOME PROGRAM- BY FIRM

Date of Review: September 11, 2020

Company Submitting Proposal and Score:

<i>Selection Committee Member</i>	Barry Calhoun	Alyssa Dibbern	Rhonda Clegg	Scotty Jones
<i>Name of Company</i>	GrantWorks,Inc	GrantWorks, Inc.	GrantWorks, Inc	GrantWorks, Inc.
<i>Experience (45 Points)</i>	45	45	45	45
<i>Work Performance (25 Points)</i>	23	20	17	24
<i>Capacity to Perform (25 points)</i>	25	24	25	25
<i>Proposed Cost (5 points)</i>	4.375	4.375	4.375	4.375
Total Points Awarded	97.375	93.375	91.375	98.375

AVERAGE SCORE: 95.125

Summary of Request for Proposals for Administration Services- HOME PROGRAM- BY FIRM

Date of Review: September 11, 2020

Company Submitting Proposal and Score:

<i>Selection Committee Member</i>	Barry Calhoun	Alyssa Dibbern	Rhonda Clegg	Scotty Jones
<i>Name of Company</i>	Langford Management Services	Langford Management Services	Langford Management Services	Langford Management Services
<i>Experience (45 Points)</i>	42	45	45	38
<i>Work Performance (25 Points)</i>	21	18	15	25
<i>Capacity to Perform (25 points)</i>	22	21	25	22
<i>Proposed Cost (5 points)</i>	5	5	5	5
Total Points Awarded	90	89	90	90

AVERAGE SCORE: 89.75

R-2020-_____

A RESOLUTION BY THE CITY OF BAY CITY, TEXAS, AUTHORIZING THE AWARD OF CONTRACT FOR ADMINISTRATION SERVICES AND SOFT COST PROJECT MANAGEMENT SERVICES FOR THE HOME OWNER REHABILITAION ASSISTANCE PROGRAM.

WHEREAS, it is necessary and prudent to initiate the implementation process at the earliest possible date;

WHEREAS, a significant amount of time can be saved by completing the procedures for hiring professional services for the HOME Investment Partnership Program at the earliest possible time; and

WHEREAS, the Request for Proposal procedures for administrative and soft cost management services are valid for the HOME Investment Partnership Program contract term;

NOW, THEREFORE, BE IT RESOLVED:

Section 1. That **GrantWorks, Inc.** be awarded a contract to provide HOME Investment Partnership Program related administration services and soft cost project management services for the HOME Reservation and Contract Program;

Section 2. That any and all contracts or commitments made with the above-named service provider are dependent on the successful negotiation of a contract with the service provider;

PASSED AND APPROVED on this ____ day of _____ 2020.

Robert K. Nelson, Mayor

ATTEST:

Jeanna Thompson, City Secretary

RESOLUTION~ DISCUSS, CONSIDER AND/OR APPROVE A RESOLUTION OF THE CITY OF BAY CITY TEXAS ADOPTING TCAP’S PROFESSIONAL SERVICES AGREEMENT AND GEXA ENERGY’S COMMERCIAL ELECTRIC SERVICE AGREEMENT FOR POWER TO BE PROVIDED ON AND AFTER JANUARY 1, 2023.



EXECUTIVE SUMMARY

BACKGROUND:

- Texas Coalition for Affordable Power (“TCAP”) is a non-profit political subdivision corporation established by the 2010 merger of Cities Aggregation Power Project, Inc. (“CAPP”) and South Texas Aggregation Project, Inc. (“STAP”), both created in 2001 to aggregate members’ power needs in order to negotiate better electric prices for their members. TCAP is one of the largest political subdivision aggregation groups in Texas with political subdivision members that purchase approximately 1.3 billion kWh annually.

- The City joined TCAP in June 2018. The current TCAP contract runs through December 2022.

- TCAP has a new procurement program—called Strategic Hedging Program (SHP) that will involve purchasing power two years in advance of delivery to its members. Instead of buying electricity through a fixed price longer term contract, SHP will procure one twelfth of the annual supply each month, two years forward year-to-year.

FINANCIAL IMPLICATIONS: Anticipated savings

RECOMMENDATION: Recommend City Council approve Resolution to approve the Professional Services Agreement and the Commercial Electricity Service Agreement

ATTACHMENTS: Resolution, Professional Services Agreement, Electric Contract, SHP Explanation



Background.

Texas Coalition for Affordable Power has procured electricity for its members since the beginning of retail electric deregulation in Texas in 2002. In the recent past, it has become evident that the electric market and the mix of available sources and supplies have changed dramatically. While the current electric fixed price/fixed term contract has worked well, TCAP believes that a more optimum program—called Strategic Hedging Program (SHP)--will now be offered to its members. In recent years, the United States has become the world's largest supplier of oil and natural gas, particularly with the development of fracking technology. The DOE production estimate through 2050 shows a well-supplied market and stable price outlook. There has also been a tremendous growth in renewable energy sources such as wind and solar power.

What is SHP?

Instead of buying electricity through a fixed price longer term contract, SHP will procure one twelfth of the annual supply each month, two years forward year-to-year. This provides the lowest market pricing to reduce carrying charges and risk premiums that longer term contracts must charge. Pricing will never be out of the market. SHP features an ultra-competitive RFP process of 20+ vetted creditworthy suppliers. At least 4 suppliers will be in each TCAP portfolio at all times. Prices will be known to members well prior to fiscal year budgeting needs. It avoids the “all-in” guess of a single fixed price multi-year deal. It also provides members with twice a year periodic off ramps if a member desires to revert to a traditional fixed price/fixed term contract.

What action needs to be taken and when?

In order to prepare for an electric supply contract beyond the 2022, it is necessary for members to have their governmental bodies pass the enclosed resolution to approve the Professional Services Agreement and the Commercial Electricity Service Agreement. The resolution authorizes TCAP to function as a procurer of energy in addition to serving as an agent in negotiating contracts. *However, it is important that members intending to participate in SHP do so by September 30, 2020 in order to be included in the monthly auctions beginning in January 2021.*

R-2020- _____

**RESOLUTION OF THE CITY OF BAY CITY TEXAS
ADOPTING TCAP’S PROFESSIONAL SERVICES
AGREEMENT AND GEXA ENERGY’S COMMERCIAL
ELECTRIC SERVICE AGREEMENT FOR POWER TO BE
PROVIDED ON AND AFTER JANUARY 1, 2023**

WHEREAS, the City of Bay City, Texas is a member of Texas Coalition For Affordable Power, Inc. (“TCAP”), a non-profit, political subdivision corporation of the State of Texas; and

WHEREAS, TCAP has previously arranged for the City to purchase power through Gexa Energy with a contract set to expire December 31, 2022; and

WHEREAS, TCAP has designed a new procurement strategy that will involve TCAP initially committing to purchase power two years in advance of delivery on behalf of its members who desire participation in a Strategic Hedging Program (“SHP”) that will involve a series of monthly competitive auctions; and

WHEREAS, TCAP has prepared a Professional Services Agreement (“PSA”), attached as Exhibit A, that, in addition to enumerating services and benefits to members of TCAP, provides TCAP with specific authority to procure power in the wholesale market on behalf of members who choose to participate in the SHP; and

WHEREAS, approval of the PSA is a necessary, but not sufficient, prerequisite to participation in the SHP; and

WHEREAS, the PSA is a relational contract that defines services provided by TCAP to members regardless of whether a member decides to commit to the SHP; and

WHEREAS, the industry-standard retail contract is a Commercial Electric Service Agreement (“CESA”) offered by a Retail Electric Provider (“REP”); and

WHEREAS, TCAP has negotiated modifications to the current CESA between the City and Gexa Energy to reflect participation in the SHP; and

WHEREAS, the CESA that will facilitate participation in the SHP effective for power deliveries in and beyond 2023 (attached as Exhibit B) will need to be approved and signed prior to October 1, 2020; and

WHEREAS, the City desires to participate in the SHP.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS:

SECTION 1. That the Mayor is authorized to sign Exhibit A, TCAP's Professional Services Agreement, and Exhibit B, Gexa Energy's CESA, and send the agreements to TCAP, 15455 Dallas Parkway, Ste 600, Addison, TX 75001.

PASSED AND APPROVED this 22nd day of September 2020.

ROBERT K. NELSON, MAYOR

ATTEST:

Jeanna Thompson, City Secretary

APPROVED AS TO FORM:

Anne Marie Odefey, City Attorney

PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF BAY CITY, TEXAS AND TEXAS COALITION FOR AFFORDABLE
POWER, INC.

This Professional Services Agreement (“AGREEMENT”) is made and entered by and between Texas Coalition for Affordable Power, Inc. (“TCAP”), a non-profit, political subdivision corporation, and City of Bay City, Texas (“MEMBER”), a TCAP member.

SECTION 1 DURATION:

This AGREEMENT becomes effective as of signing by MEMBER and shall remain effective as long as MEMBER is being served by TCAP and MEMBER’s electric load included in a current TCAP procurement.

SECTION 2 PURPOSE OF AGREEMENT:

The purpose of this AGREEMENT is to define services and obligations of TCAP to MEMBER and obligations of MEMBER to TCAP and other members. In furtherance of this AGREEMENT, MEMBER will enter into a Commercial Electric Service Agreement (“CESA”) with a retail electric provider (“REP”) selected by TCAP pursuant to the terms set forth herein; provided that nothing in this AGREEMENT is intended to alter the price or other terms of MEMBER’s current CESA in effect through December 31, 2022.

SECTION 3 OBLIGATIONS OF TCAP TO MEMBER:

MEMBER authorizes TCAP to contract for the purchase of energy for MEMBER in the wholesale market from an energy manager selected by TCAP (“Energy Manager”) and to select an acceptable, cost-beneficial REP to serve MEMBER’s electric accounts. TCAP shall provide procurement services, which services shall consist of securing wholesale power for MEMBER through an alternative procurement strategy, such as TCAP’s Strategic Hedging Program (“SHP”), as may be authorized and defined by TCAP’s Board of Directors. If MEMBER has provided to TCAP an Authorized Election Form, TCAP’s procurement services to MEMBER shall also consist of arranging fixed-price, fixed-term offers to MEMBER following solicitation of competitive offers. TCAP consultants and attorneys will negotiate terms and conditions of all contracts, monitor performance of Energy Managers and REPs, work to avoid and remedy problems that may be encountered by MEMBER where possible, assist MEMBER with wires company issues, and represent MEMBER in energy related matters before State agencies, the courts or legislature. TCAP will provide additional customer services to MEMBER that are defined in SECTION 5.

SECTION 4 OBLIGATIONS AND RIGHTS OF MEMBER:

MEMBER will honor the terms of its CESA and promptly pay or promptly dispute invoices from its REP. MEMBER will comply with the confidentiality and non-disclosure obligations contained in its CESA and Section 7 of this AGREEMENT. MEMBER will designate one or more individuals to receive notices and updates from TCAP and will

promptly update contact information. MEMBER will pay aggregation fees to support the non-profit functions of TCAP assessed annually by the TCAP Board of Directors and recovered as part of the energy charges paid to REP. Also, MEMBER will pay or receive refunds equal to the Quarterly Adjustment and the Annual Adjustment mutually agreed upon by TCAP and the Energy Manager to address certain variable costs and charges, including costs imposed by ERCOT, such payment or receipt of funds subject to the reserve account as further described herein. TCAP members will fund, and TCAP will maintain and administer, a reserve account to facilitate the reconciliation of any Quarterly Adjustments or Annual Adjustments by collecting any excess amounts paid and/or paying any deficient amounts incurred (as possible). The reserve account balance will be maintained at a minimum level to cover anticipated future needs for up to two (2) years. The TCAP Board may vote to refund to members amounts in excess of future anticipated needs. Any monies remaining in the reserve account at the dissolution of TCAP will be refunded to current membership at the time of dissolution. TCAP is owned and controlled by its members and is governed by a Board of Directors consisting of employees or elected officials of members. Consistent with TCAP's Bylaws, each MEMBER has a right to nominate its representative to serve on the Board of Directors and has a right to vote in annual elections of Board members. MEMBER has a right to attend or monitor each Board meeting. TCAP has a financial audit performed each year and MEMBER has a right to a copy of the annual audit upon request.

SECTION 5 TCAP SERVICES TO MEMBER:

A. Procurement of Energy Supplies and REP Services

1. TCAP Procurement Services and Capabilities

TCAP will assist prospective members in reviewing market conditions and in estimating the most price opportune time to contract for energy supplies. TCAP will work with MEMBER to achieve a competitive price that balances supply security and risk tolerance while maintaining superior billing and customer services. As a political subdivision corporation, offering electricity procurement to political subdivisions, TCAP has the ability to procure wholesale energy supplies and REP services separately to secure the most effective combination of competitively priced energy supplies and superior billing and customer services. TCAP may utilize either wholesale or retail sources of power, or some combination of both. TCAP may utilize multiple suppliers with different generation resources. TCAP will solicit bids from multiple sources for energy supplies. TCAP aggregates the load of all members to maximize clout in negotiating contract terms. TCAP's objective in negotiations with suppliers is to continue obtaining favorable terms regarding band widths for annual usage based on total load of all members (rather than based on MEMBER's individual load) and to minimize fees for adding or deleting accounts. TCAP will monitor the wholesale and retail markets for favorable hedging opportunities. TCAP will also monitor, evaluate and issue requests for proposals for power

development opportunities beneficial to its MEMBERS, including renewable projects (each, a “Power Project”).

2. MEMBER Procurement Options

If MEMBER elects a fixed-price contract for a fixed period by submitting an Authorized Election Form, TCAP will function as MEMBER’S agent in the wholesale energy marketplace in soliciting, evaluating and negotiating each such fixed-price contract. Absent an election, MEMBER shall participate in other procurement strategy options offered by TCAP, such as TCAP’s SHP, and TCAP will function as MEMBER’s electric energy procurer. As such, TCAP will (i) oversee the Energy Manager, (ii) will direct the Energy Manager to solicit wholesale energy market quotes, (iii) will cause the Energy Manager to transact at the most favorable executable market quotes and (iv) will negotiate and develop the Energy Price in MEMBER’S CESA (the “CESA Energy Price”). The CESA Energy Price shall be developed and agreed upon by TCAP, the Energy Manager and the REP and shall include the wholesale energy market transactions as well as Energy Manager’s estimate of any non-fixed charges, including zonal congestion charges, ancillaries service charges, and other charges in connection with MEMBER’S load. If MEMBER elects to purchase power from a Power Project solicited and chosen by TCAP via a competitive RFP process (or other similar process), TCAP will function as MEMBER’S electric energy procurer, and will direct the Energy Manager to include the value of the power procured from such projects in the development of MEMBER’S CESA price.

B. Customer and Billing Services Provided by TCAP

1. REP Portal

TCAP consultants oversee the development and presentation of the REP’s portal for TCAP members; the REP will be responsible for operation of the portal. TCAP provides training and assistance regarding portal use.

2. REP Customer Service

TCAP negotiates with the REP regarding service standards and annually reviews REP performance. TCAP maintains a right to replace a REP for unsatisfactory performance without affecting the price of wholesale power, so long as the replacement REP has a credit rating acceptable to the Energy Manager. TCAP continuously monitors customer billings and will alert both the REP and MEMBER, when appropriate, of any billing errors and the adjustments needed to ensure accurate and reliable billings to MEMBER. TCAP will advocate on behalf of MEMBER when needed to resolve billing or customer service issues. TCAP will review customer billings and make MEMBER aware of inactive accounts that MEMBER may be able to disconnect to save monthly charges.

3. TCAP Assistance with Budgets and Required Filings and Assistance with TDSP Issues

TCAP monitors Public Utility Commission (“PUC”) and ERCOT activity and will provide MEMBER a forecast of changes in non-by passable charges that may impact MEMBER’s annual budget estimates. TCAP will prepare an annual electricity cost estimate for MEMBER. TCAP will assist MEMBER in preparation of energy related reports that may be necessary for MEMBER to file in response to legislative or agency mandates. TCAP will assist MEMBER in understanding non-bypassable charges included in REP invoices, and assist in resolving issues caused by errors of MEMBER’S Transmission and Distribution Service Provider (“TDSP” aka “wires company”).

4. Information Services

TCAP maintains a member web site, www.tcaptx.com. In addition to regular blog postings on energy news relevant to MEMBER, TCAP has prepared and posted major reports on the history of deregulation in Texas and a history of ERCOT. TCAP consultants continuously monitor the Nymex gas market, ERCOT energy market, and economic conditions that may affect MEMBER, as well as activities at the PUC and ERCOT. Important trends are noted in consultant reports to the Board of Directors and are attached to Board Minutes. TCAP’s Executive Director prepares and distributes a monthly newsletter and coordinates TCAP activities with various city coalitions and Texas Municipal League (“TML”). The Executive Director monthly newsletters will also include important or trending issues in the energy markets.

5. Demand Response, Distributed Generation and Cost Savings Strategy

TCAP will work with relevant service providers to make available to MEMBER competitive demand reduction programs that facilitate MEMBER’s participation in TDSP and ERCOT cost reduction strategies approved by the PUC. Upon request, TCAP will monitor and evaluate demand reduction program performance metrics. TCAP will assist MEMBER in reviewing, analyzing and developing distributed generation programs that can reduce wires and energy costs and/or provide backup power to specific facilities. TCAP will assist MEMBER in meeting renewable energy goals established by MEMBER, including behind-the-meter solar projects and local wind projects.

6. Regulatory and Legislative Representation

TCAP will provide representation and advocacy services on energy issues relevant to MEMBER in regulatory and legislative areas including, but not limited to, ERCOT stakeholder meetings, PUC projects and dockets, and legislative actions.

7. Strategic Hedging

To the extent that there is sufficient interest and commitment of load of TCAP members within an ERCOT zone, and to the extent MEMBER has not elected a fixed-price contract for a fixed period, MEMBER will perpetually (subject to potential charter or ordinance constraints on length of contracts) commit to two-year participation obligations. MEMBER may terminate participation in the SHP, without energy price penalties and with minimal other termination fees, by providing sufficient notice as set forth herein (Section 6). A SHP price will be determined at least 9 months prior to the effective date of the price by averaging the winning bids from periodic competitive auctions that occur throughout the 24 months preceding the effective date. TCAP will direct Energy Manager to conduct the periodic competitive auctions. TCAP will have the right to audit the auction results. The auction process will be designed to identify competitively priced energy supplies from a variety of creditworthy suppliers, resulting in prices that are rarely, if ever, significantly above prevailing market prices and that should generally be less than pricing for long-term fixed priced contracts (when evaluated from a common contract start date and term). Designed to take advantage of the characteristics of the nation's well supplied energy markets, the SHP will also be flexible enough to respond to market changes when and if they occur in the future. Participation in the SHP may be viewed as a series of 24 -month forward year-to-year contracts for as long as desired by MEMBER. If MEMBER participates in the SHP, MEMBER agrees that TCAP is authorized to direct Energy Manager to procure electric energy in the wholesale market on MEMBER's behalf and that TCAP is authorized to commit MEMBER's load to periodic competitive auctions.

SECTION 6 MEMBER RIGHT OF TERMINATION:

A. Fixed-Term, Fixed-Price Contract

MEMBER may terminate a CESA prior to the end-of-term specified in a contract subject to payment of "Liquidated Damages" prescribed in MEMBER's CESA. If MEMBER commits to a fixed multi-year term, fixed-price contract and wants to terminate the agreement prior to the end of the fixed multi-year term, liquidated damages will be based on the differential in the price of electric energy futures contracts used to support the fixed-price agreement and the price of comparable electric energy contracts at time of termination and shall also include damages prescribed herein and in the CESA, as applicable. If electric energy prices are lower at the point of termination than they were at time of contracting, MEMBER should expect to pay energy price damages upon early termination. In any event, any termination payment will be calculated and assessed in accordance with MEMBER's CESA.

B. Strategic Hedging Program

Since the SHP is based on a series of one-year term contracts, MEMBER is entitled to exit the program so long as notice of termination can be given prior to inclusion of MEMBER's load in the competitive auction process for a future year's price. TCAP will periodically notify MEMBER of expected procurement schedules and provide no less than 90 days

prior notice of any upcoming solicitation, and MEMBER may notify TCAP that it wants to exclude its load from the competitive auction process by giving notice at least 60 days prior to the next procurement date. Termination of involvement in SHP without appropriate notice will require calculation of damages as prescribed by CESA under Edison Electric Institute (“EEI”) principles with the intent of making the REP and Energy Manager whole for the termination. Liquidated damages will be based on the differential in the price of electric energy futures contracts used to support the SHP price and the price of comparable electric energy contracts at time of termination and shall also include damages prescribed herein and in the CESA, as applicable. If electric energy prices are lower at the point of termination than they were at time of contracting, MEMBER should expect to pay energy price damages upon early termination. In any event, any termination payment will be calculated and assessed in accordance with MEMBER’s CESA.

C. Participation in Power Projects

If MEMBER has chosen to purchase power from a Power Project through TCAP, in accordance with a signed Project Addendum attached to MEMBER’S CESA, MEMBER’S termination rights with respect to its commitment to purchase power from the Power Project shall be contained in the Project Addendum.

SECTION 7 CONFIDENTIALITY:

MEMBER is a governmental body subject to public information laws, including Chapter 552 of the Texas Government Code. If MEMBER receives a valid request under applicable public information laws for information related to this AGREEMENT or its CESA, it shall provide TCAP notice of the request including a description the information sought prior to MEMBER’S release of information so that TCAP has the opportunity to determine whether such information is subject to an exception as trade secret, competitive, commercial, or financial information. With the exception of the preceding disclosures pursuant to public information laws, a Party (that party, the “Receiving Party”) shall keep confidential and not disclose to third parties any information related this AGREEMENT, except for disclosures to Authorized Parties or as otherwise required by law; and provided that MEMBER authorizes TCAP to provide Energy Manager and REP with any relevant information concerning MEMBER’S account, usage and billings. The provisions of this Section 7 apply regardless of fault and survive termination, cancellation, suspension, completion or expiration of this AGREEMENT for a period of two (2) years. “Authorized Parties” means those respective officers, directors, employees, agents, representatives and professional consultants of MEMBER and TCAP and each of their respective affiliates that have a need to know the confidential information for the purpose of evaluating, performing or administering this AGREEMENT.

SECTION 8 PARAGRAPH HEADINGS:

The paragraph headings contained in this AGREEMENT are for convenience only and shall is no way enlarge or limit the scope or meaning of the various and several paragraphs.

SECTION 9 COUNTERPARTS:

This AGREEMENT may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 10 DEFINITIONS:

“Annual Adjustment” shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to Power Project settlements, if applicable. For those MEMBERS that participate in SHP, the Annual Adjustment shall also include (i) adjustments related to the loss factor for each specific ERCOT zone and (ii) adjustments related to load reconciliation as determined by TCAP, the Energy Manager and the REP.

“Energy Manager” means the wholesale market participant selected by TCAP to conduct SHP procurements at TCAP’s direction, in accordance with Section 5A and Section 7 of this Agreement. The Energy Manager may sell all or a portion of the required wholesale energy to TCAP or TCAP’s REP.

“Power Project” means a power generation project identified by TCAP to supply electric energy to one or more TCAP Members.

“Project Addendum” means the Addendum for a Power Project, if any, signed and attached as an Exhibit to MEMBER’S CESA.

“QSE Services Fee” means the QSE Services Fee in affect during the Delivery Term, as agreed between TCAP and Energy Manager.

“Quarterly Adjustment” shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to (i) ERCOT zonal congestion charges and (ii) ancillary services charges and other charges imposed by governmental agencies or ERCOT upon wholesale suppliers or REPs under statutes, regulations or courts for services within ERCOT zones. Said charges or refunds will be proportional to MEMBER’s relative contribution to TCAP load within specific ERCOT zones.

“Retail Electric Provider” or “REP” means the Retail Electric Provider that is party to (i) the REP Services Agreement with TCAP and (ii) the CESA between itself and MEMBER for the provision of retail electric service.

“Strategic Hedging Program” or “SHP” means an energy procurement strategy approved by TCAP’s Board of Directors, overseen by TCAP’s designated consultants, and administered by TCAP’s appointed Energy Manager, whereby wholesale energy is solicited and procured at agreed upon intervals, as directed by TCAP.

EXECUTED on this the 22nd day of September, 2020.

MEMBER:

By: _____

Printed Name: _____

Title: _____

TCAP:

By: _____

Printed Name: _____

Title: _____

COMMERCIAL ELECTRICITY SERVICE AGREEMENT

This Commercial Electricity Service Agreement, including all of the Attachments, Schedules, and Exhibits, which are attached and incorporated (collectively, the “**Agreement**”), is entered into between Gexa Energy, LP (“**Gexa**”), a Texas limited partnership, and **City of Bay City, Texas** (“**Customer**”). Gexa and Customer may be referred to individually as a “**Party**” or collectively as the “**Parties**”.

SECTION 1: RETAIL ELECTRIC SALES AND SERVICES

1.1 Appointment and Scope. Customer appoints Gexa as its Retail Electric Provider (“**REP**”) for the ESI ID(s) served under this Agreement. Customer authorizes Gexa to: (i) act as Customer’s REP for all purposes; and (ii) provide the services required of a REP including, without limitation, the procurement, scheduling and delivery of electricity throughout the Term to each of the ESI ID(s) in accordance with the terms set forth in this Agreement, including the Terms and Conditions of Service set forth in Attachment A. Customer’s appointment imposes no other duties on Gexa other than those specified in this Agreement and the REP Services Agreement.

1.2 Agreement to Purchase. Customer shall purchase its electricity requirements from Gexa throughout the Term for each of the ESI ID(s) except as otherwise provided. The electricity and services Customer receives from Gexa is for Customer’s exclusive proprietary use. Customer alone shall pay for electricity and services provided and for electricity and services Customer fails to take pursuant to its contractual obligations. If Gexa fails to deliver sufficient quantities of electricity to the TDSP for delivery to Customer or fails to schedule the delivery of sufficient quantities of electricity (collectively, a “**Scheduling Failure**”) the TDSP is obligated by law and by its tariff to deliver sufficient electricity to satisfy Customer’s needs. If a Scheduling Failure occurs, Gexa shall financially settle, at no additional cost or expense to Customer, with its Qualified Scheduling Entity (as defined by ERCOT) for the purchase of electricity necessary to cover the Scheduling Failure.

1.3 Membership in TCAP. Customer is a current member of the Texas Coalition for Affordable Power, Inc. (“**TCAP**”), and has entered into the Professional Services Agreement (the “**PSA**”) authorizing the purchase of wholesale energy on behalf of the Customer by TCAP and/or TCAP’s Energy Manager. Such wholesale energy purchases will affect the calculation of the Energy Price throughout the Term of this Agreement as described in Section 2. If, at any time during the Term, Customer elects to participate in a Power Purchase Agreement with a project to be developed for TCAP’s members, and executes the Project Addendum for such project, then the Project Addendum will be attached hereto as Schedule I. Notwithstanding Customer’s TCAP membership status, Customer agrees to fulfill all of its obligations under this Agreement, the PSA and, if applicable, the Project Addendum throughout the Term of this Agreement.

1.4 Term.

(a) Effective Date and Termination Date. Gexa shall provide retail electric service under this Agreement to each ESI ID beginning on the Effective Date and Terminating on the Termination Date, as further defined in this Section 1.4(a) (such period, the “**Term**”). The Effective Date will occur either (i) on the date occurring on or after the Expected Start Date stated in Attachment B on which each such ESI ID is enrolled with Gexa’s service for any new customer, or (ii) if Customer is an existing customer then the Expected Start Date is the meter read date following the expiration of the Customer’s prior Agreement with Gexa. Gexa shall continue to provide retail electric service to each ESI ID unless or until the Customer gives notice to TCAP and Gexa of its intent to terminate its membership with TCAP (“**Termination Notice**”). The Termination Date will occur on each respective ESI ID meter read date during the last month of the calendar year for which electricity has been purchased on Customer’s behalf by either TCAP or the Energy Manager in accordance with the PSA prior to the Termination Notice, except that in no event will the Term exceed beyond December 31, 2037. For avoidance of doubt, the Termination Date for each respective ESI ID shall be the sooner to occur of (i) the meter read date occurring in the last month of the calendar year for which electricity has been purchased by either TCAP or the Energy Manager on behalf of the Customer prior to the Termination Notice or (ii) the meter read date occurring in December 2037. As a result of variations in the timing of the Effective Date described in this Section 1.3 the Term may include a partial calendar month in addition to the number of months set forth in Attachment B, if any.

(b) Delayed Effective Date. Gexa shall use commercially reasonable efforts to cause the Effective Date for each ESI ID to occur on the Expected Start Date. If the Effective Date for an ESI ID occurs more than 20 days after the Expected Start Date, Customer may provide Gexa with evidence of the amount of electricity purchased by Customer from its current REP in connection with that ESI ID during the period on and after the 21st day after the Expected Start Date until the Effective Date (the “**Delayed Effective Date Period**”), and the total amount paid by Customer to its current REP for the electricity it purchased during the Delayed Effective Date Period (the “**Delayed Effective Date Electricity Amount**”). Upon receipt of evidence from Customer Gexa shall calculate and provide Customer a credit against future purchases under this Agreement equal to the positive amount resulting from the following calculation: (a)

the Delayed Effective Date Electricity Amount minus (b) the amount that Customer would have paid to Gexa pursuant to this Agreement during the Delayed Effective Date Period for the same amount of electricity purchased by Customer from its current REP during that period in connection with the affected ESI ID(s); provided, that Gexa shall not be required to provide a credit with respect to any period during a Delayed Effective Date Period where the delay was caused by an event outside of Gexa's control.

ITEM #6.

(c) Service After Term. If, for any reason, service continues beyond the Term, it will be on a month-to-month basis, and the Agreement will continue in effect for the ESI ID(s) except that the Energy Price will be the greater of: (i) the Energy Price as set forth in Section 2.1 below, or (ii) the aggregate weighted average of the Market Rate (as defined herein) as determined for all of the ESI ID(s), for as long as service continues. If Customer has not switched from Gexa to another supplier at the expiration of the Term, Gexa shall serve Customer at the rate set forth in this Section for a minimum of 60 days. After those 60 days, Gexa may continue to serve Customer or terminate the Agreement and disconnect Customer.

1.5 Modifications to ESI IDs. Gexa shall work with Customer in good faith during the Term to reasonably accommodate and assist Customer with the management of its electricity needs. If at any time during the Term, Customer wants to i) add or delete one or more ESI IDs, ii) otherwise modify the ESI ID information as a result of a decision by Customer to open, close or sell a facility owned or leased by Customer, iii) expand an existing facility, or iv) increase an existing facility's metered load, then Customer shall provide written notice to Gexa of such change ("ESI ID Change Notice"). If such change to the ESI ID is expected to occur prior to the first month of any calendar year for which the Energy Price has been established as of the date of the ESI ID Change Notice, in accordance with Section 2.1 (a) of this Agreement, such notice shall include Customer's election of the "Special Load Threshold," as defined below, which will apply to such change in load. If, in Gexa's reasonable judgment, i) the addition is a separately metered load which does not exceed the applicable Special Load Threshold; or ii) does not result in a net increase in excess of the applicable Special Load Threshold for an existing facility, Gexa shall use commercially reasonable efforts to promptly implement such changes, including providing required notices to ERCOT. If the addition is a separately metered load which exceeds the applicable Special Load Threshold, or results in a net increase in excess of the applicable Special Load Threshold after consideration of any contemporaneous offsetting load decreases, Gexa shall provide service to that ESI ID and shall determine any incremental charge or credit to provide service to any changed ESI IDs. Gexa shall apply such charge or credit to the affected ESI IDs, after such charges have been reviewed by TCAP. "Special Load Threshold" shall mean additional peak demand that is reasonably expected during the first twelve months following commercial operations to exceed, at Customer's election, either (i) 0.25 MW at any time or an annual average load of 0.125 MW or (ii) 1.0 MW at any time or an annual average load of 0.5 MW. Gexa shall make periodic reports regarding changes to the billing status of any ESI ID(s) available to Customer and TCAP. Amendments that add or remove ESI ID(s) as a result of changes made pursuant to this section are incorporated into this Agreement, and are effective on the Effective Date for each ESI ID(s) added to this Agreement or the date that retail electric service for any removed ESI ID(s) ceases or is transferred to another REP.

SECTION 2: RETAIL ELECTRIC ENERGY SERVICE CHARGES

2.1 Energy Price.

- (a) If Customer has elected to fix all or a portion of the Energy Price for a fixed term by providing an Authorized Election Form to TCAP in accordance with the PSA, the Energy Price shall equal the fixed price as determined by TCAP in accordance with the PSA, and the Authorized Election Form. Any portion of the Energy Price that is not fixed shall be noted in the Authorized Election Form, and shall be settled with Customer in accordance with Section 2.2 of this Agreement. If Customer has not made such an election, the Energy Price shall be determined in accordance with the PSA, as follows:
- (i) TCAP shall periodically solicit, or direct its designated Energy Manager to solicit, wholesale energy market quotes, and may direct the Energy Manager to transact at the lowest of the market quotes obtained for the purpose of serving customer's load, in accordance with the PSA (each such transacted quote, a "**Wholesale Transaction**").
 - (ii) Once TCAP has directed its Energy Manager to enter into Wholesale Transactions sufficient to serve Customer's load for a given calendar year, Energy Manager and TCAP shall establish the Energy Price for that Calendar Year in accordance with those procedures outlined in the PSA, which Customer hereby acknowledges it has reviewed and accepted. TCAP shall set the Energy Price for a given Calendar Year no later than nine (9) months prior to the start of such Calendar Year. If Customer elects to participate in a project and executes the Project Addendum, the Energy Price shall include an estimate of the Project Settlement for each month of the Calendar Year in accordance with the Project Addendum.
- (b) For the purposes of Section 3 the Energy Price shall be converted to dollars per kWh.

2.2 Energy Price Adjustments.

- (a) Energy Manager shall have the right to reconcile the revenues received from the Customer with Manager's Supplier Cost on (i) a quarterly basis, by determining the Quarterly Adjustment in the manner specified in the PSA and (ii) on an annual basis, by determining the Annual Adjustment in the manner specified in the PSA. The Quarterly Adjustment and Annual Adjustment may be either a charge or a credit, and shall be collected from or remitted to Customer, as appropriate, in the manner specified in the PSA.
- (b) TCAP and Energy Manager may mutually agree to fix certain component charges comprising Customer's Energy Price for a given Calendar Year, if TCAP determines that fixing these charges is likely to benefit Customer. Charges that are fixed by TCAP and Energy Manager for a given Calendar Year shall not be included in the calculation of either the Quarterly Adjustment or the Annual Adjustment for such Calendar Year, in accordance with the PSA.

ITEM #6.

2.3 Additional Pass-Through Charges. Gexa shall pass through and identify separately on Customer's bill with no mark-up Delivery Charges, Non-Recurring Charges, or Taxes that are not included in the Energy Price(s). All charges are exclusive of Taxes. Pass-Through charges may include charges related to amounts owed to Gexa and/or Wholesale Supplier in accordance with Section 1.3.

2.4 Tax Exempt Status. Customer shall provide Gexa with all required exemption certificates if Customer is exempt from paying any Taxes. Gexa shall not recognize an exemption without the exemption certificates and shall not be required to refund or credit previously paid Taxes unless the taxing entity sends the refund to Gexa. Gexa shall, however, assign to Customer any applicable claims for refund.

SECTION 3: BILLING AND PAYMENT

3.1 Billing and Payment. Gexa shall invoice Customer's accounts on a monthly basis and shall bill Customer on a consolidated basis for all ESI IDs upon Customer's request. Gexa shall provide a summary bill for all accounts and detailed information for each account. Customer shall remit payment within 30 days of receiving the invoice. Gexa shall base the invoice amount on actual data provided by ERCOT and the TDSP. If ERCOT or the TDSP does not provide actual data in a timely manner, Gexa shall use estimated data to calculate the invoice and, upon receipt of actual data, reconcile the charges and adjust them as needed in subsequent invoices.

3.2 Project Settlement Agent Services. Gexa shall remit the total Project Settlement to the Project on a monthly basis, in accordance with the REP Services Agreement.

3.3 Late Penalties, Interest on Overdue Payments, Invoice Disputes. If Customer fails to remit all undisputed amounts on or before the due date, interest will accrue on any due and unpaid amounts from the due date at a rate of one percent per month, or the highest rate permitted by law, whichever is less. If Customer disputes a portion of an invoice it shall provide Gexa a written explanation specifying the amount in dispute and the reason for the dispute within 20 days of the invoice date. If Customer does not provide timely notice, Customer shall owe all amounts by the due date. Notwithstanding the above, if Customer notifies Gexa of a disputed invoice, regardless of whether Customer has already paid the invoice, Gexa shall make records in its possession that are reasonably necessary for Customer to determine the accuracy of the invoice available to Customer during normal business hours; provided, however that neither party may request an adjustment or correction of an invoice unless written notice of such dispute is given within twelve months after the due date of such invoice; provided further, that such twelve month limit does not apply in the case of TDSP meter tampering charges first billed to Gexa that prevent Gexa from reasonably adjusting invoices prior to the twelve month period. In all cases, Gexa and Customer shall use good faith efforts to resolve disputes. In the event the Parties are unable to resolve a dispute within ten days of the notice date, either Party may begin legal proceedings to seek resolution. Any amounts determined owed shall be paid within three days after a decision.

3.4 Aggregator Fees. Pursuant to the REP Services Agreement between Gexa and TCAP, Gexa is obligated to pay TCAP an amount determined by multiplying a TCAP Aggregation Fee by the volume consumed in association with the ESI IDs (the "Aggregator Fee"). Customer shall pay the Aggregator Fee. The initial TCAP Aggregation Fee is \$0.001 per kWh, however, it may be changed by the TCAP Board of Directors at any time. Gexa shall state the Aggregator Fee as a separate line item on the Customer's bill.

3.5 Billing Guarantee. Gexa shall issue an invoice based on actual or estimated usage to Customer for every ESI ID at least one time per month. If, for reasons other than Force Majeure, Gexa fails to invoice an ESI ID within 120 days of any scheduled meter read, Gexa irrevocably waives its right to invoice Customer for any energy consumed at that ESI ID for the meter read cycle that should have been invoiced, unless not less than 10 days prior to the expiration of such 120 day period, Gexa provides Customer with a written explanation of the circumstances that prevent Gexa from issuing that invoice and the expected time by which an invoice can be issued. In such event, Customer and Gexa shall determine a reasonable extension period, not to exceed 30 days, within which an invoice will be issued. Gexa shall adjust or true-up each invoice no more than twice and Gexa shall issue such adjustments within 210 days of the initial issue date. Notwithstanding the foregoing, Gexa may issue an invoice or partial invoice arising from meter tampering charges without limitation and within a reasonable time after first billed to Gexa by the TDSP.

SECTION 4: CUSTOMER INFORMATION, CREDIT AND DEPOSITS

4.1 Customer Information. By entering into this Agreement and appointing Gexa as Customer's agent for electricity service, Customer authorizes Gexa to obtain certain information that Gexa may need to provide electricity service to Customer, including Customer's address, telephone number, account numbers, historical usage information, and historical payment information from Customer's TDSP, and Customer further authorizes its TDSP to release that information to Gexa. ITEM #6.

4.2 Deposits and Other Security. A Party (the "Requesting Party") may require the other Party (the "Providing Party") to provide a deposit (or additional deposit if an initial deposit was also required), letter of credit, or other form of credit assurance reasonably acceptable to the Requesting Party (collectively, "Performance Assurance") during the Term of this Agreement if: (i) the Requesting Party determines in its reasonable discretion that there has been a material adverse change in the Providing Party's or its guarantor's (if applicable) credit status or financial condition (which, if applicable, will mean that its credit or bond rating has dropped lower than BBB- by Standard & Poor's Rating Group or Baa3 by Moody's Investor Services or ceases to be rated by either of these agencies); or (ii) Customer has been delinquent in paying the electric bill by more than seven days more than twice during the past twelve months. Any Performance Assurance, less any outstanding balance owed by Providing Party to the Requesting Party, will be returned to the Providing Party once the Providing Party's or its guarantor's (if applicable) credit or financial condition becomes satisfactory or, if applicable, to a credit or bond rating of BBB- or Baa3 or higher, whichever occurs earlier; or, if the Performance Assurance relates to delinquent payments, the Providing Party has paid all outstanding balances and has made all payments within the dates set forth in this Agreement for a period of six consecutive months.

SECTION 5: EARLY TERMINATION; DAMAGES

5.1 Cancellation by Customer for Insufficient Appropriations. If, during Customer's annual appropriations determination, the applicable governmental authorities do not allocate sufficient funds to allow Customer to continue to perform its obligations under this Agreement (an "Appropriations Failure"), then Customer or Gexa shall have the right to terminate this Agreement in full or as to any affected ESI ID upon 30 days advance written notice effective at the end of the period for which appropriations are made; provided, that if appropriations are subsequently allocated for electricity for the ESI IDs covered by this Agreement, then the termination may be revoked at Gexa's option and those appropriations shall continue to apply to this Agreement and shall not be used for an electricity supply agreement with another REP. Upon a termination of this Agreement for Appropriations Failure, in full or as to any ESI ID(s), Customer shall pay all amounts due Gexa under this Agreement, including the Customer Early Termination Damages.

5.2 Customer Early Termination Damages. Except in connection with the closure of a facility associated with an ESI ID pursuant to Section 1.4, in connection with a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Customer cancels this Agreement before the end of the Term and refuses to accept electric supply delivery from Gexa for any ESI ID(s), Gexa may charge Customer early termination damages equal to the sum of (a) the Retail Termination Payment, (b) the QSE Services Termination Payment, (c) the Quarterly and Annual Adjustment Payment, and (d) the Wholesale Transaction Termination Payment, as each of these terms are defined below (the sum total of these, the "Customer Early Termination Damages"). The "Retail Termination Payment" shall equal the product of (a) the Expected Usage for each ESI ID subject to Customer's cancellation or refusal of electric supply delivery ("Customer Terminated Usage") multiplied by (b) the sum of (i) the Aggregator Fee and (ii) the REP Services Fee specified in the REP Services Agreement. The "QSE Services Termination Payment" shall equal the product of (a) the Customer Terminated Usage grossed up for losses multiplied by (b) the QSE Services Fee, as defined in the PSA. The "Quarterly and Annual Adjustment Payment" shall be calculated by the Energy Manager in accordance with the PSA, and shall include any Quarterly and Annual Adjustment amounts for electricity provided to the Customer under this Agreement prior to the termination of this Agreement, which have not yet been charged or credited to Customer, as appropriate. For avoidance of doubt, the Quarterly and Annual Adjustment Payment may be either a charge or a credit to Customer, as calculated in accordance with the PSA. If the Customer Early Termination Damages are charged due to an Event of Default by Customer, then the Customer Early Termination Damages will also include Gexa's reasonable costs relating to the determination and collection of Customer Early Termination Damages, including attorney and consultant fees incurred. The provisions in Section 3 related to Billing and Payment apply to the billing, due date, and collection of Customer Early Termination Damages. Customer agrees that Customer Early Termination Damages are a reasonable estimate of the damages due Gexa for failure to accept electric supply, and are not punitive in nature.

5.3 Termination for Wholesale Supply Failure. If, during the Term, the Wholesale Transactions are terminated as a result of a default by the Energy Manager ("Wholesale Supply Failure"), then this Agreement will also terminate effective on the date the Wholesale Agreement terminates. In the event of a termination for Wholesale Supply Failure, Gexa shall pay Customer a Wholesale Termination Payment if required by Section 5.5.

5.4 Gexa Early Termination Damages. Except for a Wholesale Supply Failure, a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Gexa cancels this Agreement and refuses to provide electric supply delivery to Customer for any or all ESI ID(s), Customer shall have the right to charge Gexa an early termination penalty equal to the amount determined as follows: the product of (i) the Expected Usage for each ESI ID subject to Gexa's cancellation or refusal of electric supply delivery ("Gexa Terminated Usage") multiplied by (ii) the REP

Services Fee specified in the REP Services Agreement (that result the "Gexa Early Termination Damages") If the Gexa Early Termination Damages are charged due to an Event of Default by Gexa, then the Gexa Early Termination Damages will also include Customer's reasonable costs relating to the determination and collection of Gexa Early Termination Damages, including attorney and consultant fees incurred. Gexa agrees the Gexa Early Termination Damages are a reasonable estimate of the damages due Customer for failure to deliver electric supply, and are not punitive in nature.

5.5 Wholesale Transaction Termination Payment. If the Wholesale Transactions are terminated then Gexa shall calculate the portion of the termination payment paid under each Wholesale Transaction attributable to Customer's load. The termination payment under each Wholesale Transaction shall be calculated by subtracting the Wholesale Supplier's actual cost for the portion of the Wholesale Transaction still outstanding for the remainder of the Term from the current market value of comparable electric energy futures contracts. Energy Manager, in its sole discretion, shall determine the current market value of a comparable electricity futures contract within three (3) business days of the termination of a Wholesale Transaction, and shall be either (i) the value of the Wholesale Transaction actually sold to a third-party market participant or (ii) a third-party market quote for a comparable electricity energy future contracts. Energy Manager shall sum Customer's prorata share of each termination payment for each Wholesale Transaction attributable to Customer's Load to determine a total Wholesale Transaction Termination Payment under this Agreement (the "Wholesale Transaction Termination Payment"). Customer or Gexa shall pay the Wholesale Transaction Termination Payment to the other, as appropriate, in the manner described below and without regard to who is a defaulting party. If the Wholesale Transaction Termination Payment is negative, Customer shall pay Gexa the Wholesale Transaction Termination Payment. If the Wholesale Transaction Termination Payment is positive, Gexa shall pay Customer the Wholesale Transaction Termination Payment. To the extent a termination payment due from Gexa to the Energy Manager is adjusted in Gexa's account to reflect the full benefit of TCAP transacting with a replacement REP, Gexa shall make corresponding adjustments to the Wholesale Transaction Termination Payment on a pro-rata basis. Gexa shall remit a Wholesale Transaction Termination Payment due Customer, within 30 days of Gexa receiving the payment from the Energy Manager. Customer shall remit a Wholesale Transaction Termination Payment due Gexa within 30 days of Gexa's invoice. Gexa shall use commercially reasonable efforts to collect Termination Payments from the Energy Manager that include amounts due Customer.

SECTION 6: NOTICES AND PAYMENT

6.1 General Notice. Except as otherwise required by Applicable Law, all notices are deemed duly delivered if hand delivered or sent by United States, prepaid first class mail, facsimile, or by overnight delivery service. Notice by facsimile or hand delivery is effective on the day actually received, notice by overnight United States mail or courier is effective on the next business day after it is sent, and notice by U.S. Mail is effective on the second day after it is sent. The Parties shall send notices to the addresses below or any other address one Party provides to the other in writing:

- a. **If to Customer (type customer address below):**

**City of Bay City
1901 5th Street
Bay City, Texas 77414**

- b. If to Gexa:
Gexa Energy, LP
20455 State Highway 249, Suite 200
Houston, Texas 77070

6.2 Payments. The Parties shall send payments to the addresses below or any other address one Party provides to the other in writing:

- a. **If to Customer (type customer address below):**

**City of Bay City
1901 5th Street
Bay City, Texas 77414**

- b. If to Gexa:
Gexa Energy, LP
20455 State Highway 249, Suite 200
Houston, Texas 77070

SECTION 7: DEFINITIONS

7.1 Definitions. In addition to terms defined elsewhere in this Agreement, when used with initial capitalization, whether singular or plural, capitalized terms have the meanings set forth in this Section 7.1. All other capitalized terms not otherwise defined shall have the meanings given them in the following documents, with any conflicting definitions contained in those documents applied in the following order: PURA, the PUCT Substantive Rules, and the ERCOT Protocols.

1. **“Actual Usage”** means the actual amount of electric energy (in kWh) used at the ESI ID(s) as determined by the TDSP.
2. **“Delivery Charges”** means those charges or credits from the TDSP pursuant to its tariff, including, but not limited to: Transmission and Distribution Charges, System Benefit Fund Charge, Nuclear Decommissioning Charge, Competitive Transition Charge, Standard Customer Metering Charge, Customer Charge, Merger Savings and Rate Reduction Credit, Excess Mitigation Credit and Utility Imposed Reactive Power Charges.
3. **“EEI Master Agreement”** mean an EEI Master Agreement between Gexa and the Energy Manager governing the Wholesale Transactions entered into by the Energy Manager in accordance with Section 2.1 and transferred by the Energy Manager to Gexa.
4. **“Effective Date”** means the date of the first meter reading of an ESI ID provided to Gexa by the TDSP after the TDSP and ERCOT shall have timely performed any required enrollment and cancellation procedures necessary to switch Customer’s REP to such ESI ID to Gexa.
5. **“Electricity Related Charges”** means, unless noted otherwise: Ancillary Services Charge, Congestion, ERCOT Administrative Fee, Delivery Loss Charge, Transmission Loss Charge, Renewable Energy Credit Charge, Residential Energy Credit Charge, Unaccounted For Energy Charge, Qualified Scheduling Entity Charge, Imbalance Settlement Charge.
6. **“Energy Manager”** means the wholesale market participant designated by TCAP to perform the services described in the PSA.
7. **“Energy Price(s)”** means the rates per unit of measure specified in Section 2.1 and includes all Electricity Related Charges.
8. **“ERCOT”** means the Electric Reliability Council of Texas.
9. **“ERCOT Protocols”** means the document adopted, published, and amended from time to time by ERCOT, and initially approved by the PUCT, to govern electric transactions in the ERCOT Region, including any attachments or exhibits referenced in the document, that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT, or any successor document thereto.
10. **“ESI ID(s)”** means the Electric Service Identifiers for the property service addresses identified on Attachment B to this Agreement or if Customer is an existing Gexa customer then the list of service addresses currently served by Gexa, as such list may be modified from time to time as provided in Section 1.4.
11. **“Expected Usage”** means either the amount stated in Attachment B calculated for the remaining Term, or if no amounts are stated or Customer is an existing Gexa customer then the average actual monthly Customer energy usage from the comparable month from the previous year (or if an average cannot be computed due to limited service by Gexa or other circumstances, an average monthly usage as is reasonably determined by Gexa) times the number of months remaining in the Term as outlined in Section 1.4.
12. **“kWh”** means kilowatt hour.
13. **“LMP”** or **“Locational Marginal Price”** means the price calculated for the applicable trading hub pursuant to the ERCOT Protocols.
14. **“Market Rate”** means 135% of the load-weighted average of the hourly LMPs at the corresponding load zone, as determined for any delivery period.
15. **“Nodal Market”** means the implementation of wholesale market design by ERCOT with locational marginal pricing for resources.

16. "Nodal Congestion" means the positive difference in price between the real-time settlement point price as determined by ERCOT for the trading hub and the real-time settlement point price as determined by ERCOT for the load zone associated with the customer Facilities.

17. "Non-Recurring Charges" means any charges imposed by the TDSP or other third parties on a non-recurring basis for services, repairs or additional equipment needed for Customer's electric service.

18. "PUCT" means Public Utility Commission of Texas.

19. "Project Settlement Payment" means the Project Settlement Payment as defined in the Project Addendum, attached as Schedule I to this Agreement.

20. "QSE Services Fee" means the fee owed from Customer to Gexa, and remitted from Gexa to Energy Manager, for QSE Services performed by Energy Manager for the Term, as mutually agreed between TCAP and Energy Manager, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The QSE Services Fee shall be included in the Energy Price for the Term.

21. "REP Services Agreement" means the REP Services Agreement currently in effect during the Term, as amended from time to time, between Gexa and TCAP.

22. "REP Services Fee" means the fee owed from Customer to Gexa, for REP services rendered during the Term, as mutually agreed between TCAP and Gexa, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The REP Services Fee shall be included in the Energy Price for the Term.

23. "Taxes" means all taxes, assessments, levies, duties, charges, fees and withholdings of any kind levied by a duly-constituted taxing authority and all penalties, fines, and additions to tax, and interest thereon that are directly related to the services provided under this Agreement, but does not include the System Benefit Fund fee and fees and charges imposed by ERCOT. By way of example only, Taxes includes: Sales Tax, Miscellaneous Gross Receipts Tax, PUCT Assessment Fees and Franchise Fees.

24. "TCAP" means Texas Coalition for Affordable Power, an aggregation pool of governmental and other entities organized and administered by TCAP of which Customer is a member for the ESI IDs.

25. "TDSP" or "Transmission and Distribution Service Provider" means an entity regulated by the State of Texas, which transmits or distributes electric energy.

"

Attachments:

Attachment A

Attachment B (for new TCAP Customers only)

Terms and Conditions of Service

Offer Sheet (ESI ID list and Expected Start Date)

CUSTOMER (type Customer name in field below): CITY OF BAY CITY	GEXA: Gexa Energy, LP, By its General Partner Gexa Energy GP, LLC
By:	By:
Printed:	Printed:
Title:	Title:
Date:	Date:

Terms and Conditions of Service Attachment A

These Terms and Conditions of Service form an integral part of the Commercial Electricity Service Agreement between Customer and Gexa. In addition to the terms defined elsewhere in this Agreement, when used with initial capitalization, whether singular or plural, capitalized terms have the meanings set forth in Section 7.1 of this Agreement. Customer should thoroughly review the entire Agreement, including these Terms and Conditions of Service, before executing this Agreement.

A. REPRESENTATIONS AND WARRANTIES

A.1 Customer's Representations and Warranties. As a material inducement to entering into this Agreement, Customer represents and warrants to Gexa as follows: (a) it is a duly organized entity and is in good standing under the laws of Texas; (b) the execution and delivery of the Agreement are within its powers, have been duly authorized by all necessary action, and do not violate the terms or conditions of contracts it is party to or laws applicable to it; (c) performance of this Agreement will be duly authorized by all necessary action and will not violate the terms or conditions of contracts it is party to; (d) as of the date sales of electricity by Gexa to Customer under the Agreement start, Customer will have all regulatory authorizations necessary for it to legally perform its operations and such performance will not violate the terms or conditions of contracts it is party to or laws applicable to it; (e) this Agreement is a legal, valid, and binding obligation of Customer enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending; (f) there are no bankruptcy, insolvency, reorganization, receivership, or other similar proceedings pending or being contemplated by it, or to its knowledge threatened against it; (g) there are no suits, proceedings, judgments, rulings, or orders by or before any court or any government authority that could materially adversely affect its ability to perform the Agreement; and (h) as of the Effective Date and throughout the Term, there is no other contract for the purchase of electricity by Customer for the ESI ID(s), or, if such a contract presently exists, that it will terminate prior to delivery under this Agreement.

A.2 Gexa's Representations and Warranties. As a material inducement to entering into this Agreement, Gexa represents and warrants to Customer as follows: (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform the Agreement; (b) the execution and delivery of the Agreement are within its powers, have been duly authorized by all necessary action, and do not violate the terms or conditions of its governing documents or contracts it is party to or any laws applicable to it; (c) performance of the Agreement will be duly authorized by all necessary action and will not violate the terms or conditions of its governing documents or contracts it is party to; (d) as of the date sales of electricity by Gexa to Customer under the Agreement start, Gexa will have all regulatory authorizations necessary for it to legally perform its operations and such performance will not violate the terms or conditions of its governing documents, contracts it is party to, or laws applicable to it; and (e) the Agreement constitutes a legal, valid, and binding obligation of Gexa enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending.

A.3 Forward Contract. (i) This Agreement constitutes a forward contract within the meaning of the United States Bankruptcy Code ("**Code**"); (ii) Gexa is a forward contract merchant; and (iii) either Party is entitled to the rights under, and protections afforded by, the Code.

B. DISCLAIMERS OF WARRANTIES; LIMITATION OF LIABILITIES

B.1 LIMITATIONS OF LIABILITY. LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR AS OTHERWISE PROVIDED, ARE LIMITED TO DIRECT ACTUAL DAMAGES. GEXA IS NOT LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR LOSS OF REVENUES OR PROFIT. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE. EXCEPT FOR (a) THE GEXA EARLY TERMINATION DAMAGES DUE IF GEXA DEFAULTS, (b) THE CUSTOMER EARLY TERMINATION DAMAGES DUE IF CUSTOMER DEFAULTS, AND (c) THE WHOLESALE TRANSACTION TERMINATION PAYMENT, THE LIABILITY OF EITHER PARTY TO THE OTHER FOR ANY OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF ALL DOLLARS PAID BY CUSTOMER TO GEXA (IF CUSTOMER) OR RECEIVED BY GEXA (IF GEXA) PURSUANT TO THIS AGREEMENT. THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT.

B.2 Duty to Mitigate. Each Party shall mitigate damages and use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance.

B.3 WAIVER OF CUSTOMER PROTECTION RULES AND CONSUMER RIGHTS. THE PARTIES FURTHER ACKNOWLEDGE THAT THE CUSTOMER PROTECTION RULES ADOPTED BY THE PUBLIC UTILITY COMMISSION (AS CONTAINED IN ITS SUBSTANTIVE RULES 25.471 ET SEQ.) ("**CUSTOMER PROTECTION RULES**") THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES DO NOT APPLY TO THIS AGREEMENT. EXCEPT AS SET FORTH IN THIS SECTION, CUSTOMER EXPRESSLY WAIVES THE CUSTOMER PROTECTION RULES THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES TO THE FULLEST EXTENT ALLOWED

BY APPLICABLE LAW. CUSTOMER FURTHER WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES-- CONSUMER PROTECTION ACT, SECTION 17.41, ET. SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. CUSTOMER REPRESENTS AND WARRANTS TO GEXA THAT: (a) CUSTOMER IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION IN RELATION TO GEXA; (b) CUSTOMER IS REPRESENTED BY LEGAL COUNSEL THAT WAS NEITHER DIRECTLY NOR INDIRECTLY IDENTIFIED, SUGGESTED OR SELECTED BY GEXA; AND (c) CUSTOMER VOLUNTARILY CONSENTS TO THIS WAIVER AFTER CONSULTATION WITH ITS LEGAL COUNSEL.

B.4 UCC/Disclaimer of Warranties. The electricity delivered is a “good” as that term is understood in the Texas B&CC (UCC §2.105). The Parties waive the UCC to the fullest extent allowed by law and the UCC requirements do not apply to this Agreement, unless otherwise provided. If there is a conflict between the UCC and this Agreement, this Agreement controls. Neither Party controls nor physically takes possession of the electric energy prior to delivery to Customer’s ESI ID(s). Therefore, neither Party is responsible to the other for any damages associated with failure to deliver the electric energy, nor for damages it may cause prior to delivery to Customer’s ESI ID(s). Once the electric energy is delivered to Customer’s ESI ID(s) it is deemed in possession and control of Customer. ELECTRICITY SOLD UNDER THIS AGREEMENT WILL MEET THE QUALITY STANDARDS OF THE APPLICABLE LOCAL DISTRIBUTION UTILITY AND WILL BE SUPPLIED FROM A VARIETY OF SOURCES. GEXA MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND GEXA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. GEXA EXPRESSLY NEGATES ALL OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OF WARRANTY WITH RESPECT TO CONFORMITY, TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

B.5 Force Majeure. Gexa shall make commercially reasonable efforts to provide electric service, but does not guarantee a continuous supply of electricity. Gexa does not generate electricity nor does it transmit or distribute electricity. Causes and events out of the control of Gexa and Customer (“**Force Majeure Event(s)**”) may result in interruptions in service or the ability to accept electricity. If either Party is unable to perform its obligations, in whole or in part, due to a Force Majeure Event, then the obligations of the affected Party (other than the obligation to pay any amounts owed to Gexa that relate to periods prior to the Force Majeure Event) are suspended to the extent made necessary by such Force Majeure Event. Therefore, neither Party is liable to the other Party for damages caused by Force Majeure Events, including acts of God, acts of, or the failure to act by, any governmental authority (including the PUCT or ERCOT and specifically including failure by ERCOT to make Customer meter read data available), accidents, strikes, labor troubles, required maintenance work, events of “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff, inability to access the local distribution utility system, non-performance by the supplier or the local distribution utility, changes in laws, rules, or regulations of any governmental authority (including the PUCT or ERCOT) that would prevent the physical delivery of energy to Customer’s facilities, or any cause beyond such Party’s control. The Parties agree that Appropriations Failures and Scheduling Failures are not Force Majeure Events.

C. CONFIDENTIALITY AGREEMENT

C.1 Confidentiality. Customer is a governmental body subject to public information laws, including Chapter 552 of the Texas Government Code. If Customer receives a valid request under applicable public information laws for information related to this Agreement, it shall provide Gexa notice of the request including a description of the information sought prior to Customer’s release of information so that Gexa has the opportunity to determine whether such information is subject to an exception as trade secret, competitive, commercial, or financial information. With the exception of the preceding disclosures pursuant to public information laws, a Party (that party, the “**Receiving Party**”) shall keep confidential and not disclose any to third parties Confidential Information which is disclosed to the Receiving Party by the other Party (that party, the “**Disclosing Party**”) except for disclosures to Authorized Parties or as required by law. “**Confidential Information**” means information in written or other tangible form which is marked as “Confidential” when it is disclosed to the Receiving Party, except that Confidential Information shall not include information which (i) is available to the public, (ii) becomes available to the public other than as a result of a breach by the Receiving Party of its obligations hereunder, (iii) was known to the Receiving Party prior to its disclosure by the Disclosing Party, or (iv) becomes known to the Receiving Party thereafter other than by disclosure by the Disclosing Party. The provisions of this Section apply regardless of fault and survive termination, cancellation, suspension, completion or expiration of this Agreement for a period of two (2) years. Customer authorizes Gexa to provide TCAP with all information requested by TCAP about Customer’s account and billings. “**Authorized Parties**” means those officers, directors, employees, agents, representatives and professional consultants of the Parties, and of the Parties’ affiliates, that have a need to know the Confidential Information for the purpose of evaluating and performing this Agreement.

D. DEFAULT AND REMEDIES

D.1 Events of Default. An event of default (“**Event of Default**”) means: (a) the failure of Customer to make, when due, any payment required under this Agreement for any undisputed amount if that payment is not made within fifteen (15) business days after receipt of written notice (facsimile or electronic mail are valid forms of notice for this paragraph) from Gexa; or (b) any representation or warranty made by a Party proves to be false or misleading in any material respect; (c) except as provided in clause (a) above or otherwise in this section D.1, the failure of any Party to perform its obligations under this Agreement and that failure is not excused by Force Majeure and remains uncured following 20 business days written notice of the failure; (d) the defaulting Party (i) makes an assignment or any general arrangement for the benefit of creditors; or (ii) files a petition or otherwise commences, authorizes or

acquiesces to a bankruptcy proceeding or similar proceeding for the protection of creditors, or has such a petition filed against it and that petition is not withdrawn or dismissed within 20 business days after filing; or (iii) otherwise becomes insolvent; or (iv) is unable to pay its debts when due; or (v) fails to establish, maintain or extend Credit in form and in an amount acceptable to Gexa when required; or (e) the Wholesale Transaction is terminated due to a default by Gexa under CESAs with other TCAP members or due to a default by the Energy Manager under the Wholesale Transaction. If an Event of Default listed in subsection (d) of this Section occurs, it is deemed to have automatically occurred prior to such event.

D.2 Remedies upon an Event of Default. If an Event of Default occurs and is continuing, upon written notice to the defaulting Party, the non-defaulting Party may (a) commence an action to require the defaulting Party to remedy such default and specifically perform its duties and obligations in accordance with the Agreement; (b) exercise any other rights and remedies it has at equity or at law, subject to the Agreement's Limitations of Liabilities; and/or (c) suspend performance; provided, however, that suspension shall not continue for longer than ten (10) Business Days unless the non-defaulting Party has declared an early termination with proper notice. If Customer is responsible for an Event of Default and fails to cure within ten (10) days of written notice (such additional cure period does not apply to default for non-payment), in addition to its other remedies, Gexa may (i) terminate this Agreement; and (ii) charge Customer the Customer Early Termination Penalty pursuant to Section 5 of this Agreement. Notwithstanding the above, Gexa shall not disconnect or order disconnection of service to Customer unless the following events have all occurred: (1) Customer has an Event of Default for nonpayment under Section D.1(a) above, (2) Gexa gives Customer a ten (10) day written disconnection notice; and (3) Customer does not pay all undisputed outstanding payments owed by the end of the ten (10) day notice period. .

E. MISCELLANEOUS PROVISIONS

E.1 Disclaimer. This Agreement does not constitute, create, or otherwise recognize the existence of a joint venture, association, partnership, or other formal business entity of any kind among the Parties and the rights and obligations of the Parties are limited to those set forth in this Agreement.

E.2 Headings. The descriptive headings of the Articles and Sections of this Agreement are inserted for convenience only and are not intended to affect the meaning, interpretation or construction of this Agreement.

E.3 Waiver. Except as otherwise provided, failure of a Party to comply with an obligation, covenant, agreement, or condition may be waived by the other Party only in a writing signed by the Party granting the waiver, but that waiver does not constitute a waiver of, or estoppel with respect to a subsequent failure of the first Party to comply with that obligation, covenant, agreement, or condition.

E.4 Assignment. Except as provided in the REP Services Agreement, Customer shall not assign this Agreement, in whole or in part, or any of its rights or obligations pursuant to the Agreement without Gexa's prior written consent, which shall not be unreasonably withheld. Gexa may withhold consent if a proposed assignee fails to be at least as creditworthy as Customer as of the Effective Date. Gexa may: (a) transfer, sell, pledge, encumber or assign the revenues or proceeds of this Agreement in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to a Gexa affiliate with operating capability and financial condition substantially similar to Gexa; (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Gexa with an operating capability and financial condition substantially similar to Gexa as of the execution date of this Agreement; and/or (d) transfer or assign this Agreement to a certified REP with an operating capability and financial condition substantially similar to Gexa as of the execution date of this Agreement. In the case of (b), (c), or (d), any such assignee shall agree in writing to be bound by these Terms and Conditions of Service, and upon assignment, Gexa shall have no further obligations under this Agreement. Gexa shall not assign the Agreement to a non-affiliated entity (including its guarantor) that has a credit rating lower than BBB- without the prior written consent of TCAP, which shall not be unreasonably withheld.

E.5 No Third-Party Beneficiaries. This Agreement does not confer any rights or remedies on any person or party other than the Parties, their successors and permitted assigns; except that the Parties recognize that TCAP is entitled to receive the Aggregator Fee .

E.6 Severability. If a provision of this Agreement is held to be unenforceable or invalid by a court or regulatory authority of competent jurisdiction, the validity and enforceability of the remaining provisions are unaffected by that holding, and the Parties shall, to the extent possible, negotiate an equitable adjustment to the provisions of this Agreement in order to preserve the original intent and purpose of this Agreement.

E.7 Entire Agreement; Amendments. This Agreement constitutes the entire understanding between the Parties, and supersedes any and all previous understandings, oral or written, with respect to the subjects it covers. This Agreement may be amended only upon the mutually signed, written agreement of the Parties.

E.8 Further Assurances. The Parties shall promptly execute and deliver, at the expense of the Party requesting such action, any and all other and further instruments and documents which are reasonably requested in order to effectuate the transactions contemplated in this Agreement.

E.9 Emergency, Outage and Wire Service. In the event of an emergency, outage or service need, Customer shall call the TDSP for the service area of the ESI ID experiencing the emergency, outage or service need.

E.10 Customer Care. Customer may contact Gexa Customer Care if Customer has specific comments, questions, disputes, or complaints toll free at 1-866-961-9399, Monday to Friday 7:00 a.m. – 8:00 p.m. CST and Saturday from 8:00 a.m. – 2:00 p.m.. Gexa shall assist and cooperate with Customer regarding communications with a TDSP relating to service to any ESI ID served by Gexa under this Agreement.

E.11 Governing Law.

a. This Agreement is governed by and construed and enforced in accordance with the laws of the State of Texas applicable to contracts made and performed in the State of Texas, without regard to the State of Texas conflict of laws provisions.

b. All disputes between the Parties under this Agreement which are not otherwise settled will be decided by a court of competent jurisdiction in Harris County, Texas, and the Parties submit to the jurisdiction of the courts of the State of Texas and the Federal District Courts in Houston, Harris County, Texas. All disputes are governed under the laws of the State of Texas.

c. Subject to the provisions of E.11.a. above, this Agreement is subject to, and in the performance of their respective obligations under this Agreement the Parties shall comply with, all applicable federal, state and local laws, regulations and requirements (including the rules, regulations and requirements of quasigovernmental and regulatory authorities with jurisdiction over the Parties, including ERCOT) (collectively, "*Applicable Law*").

E.12 No Presumption Against Drafting. Both Parties contributed to the drafting of this Agreement. The rule of construction that any ambiguity is construed against the party who drafted this Agreement does not apply to this Agreement.

E.13 Counterparts; Facsimile Copies. This Agreement may be executed in counterparts, all of which constitute one and the same Agreement and each is deemed an original. A facsimile copy of either Party's signature is considered an original for all purposes, and each Party shall provide its original signature upon request.

E.15 Offer for Electric Service; Refusal of Service. This Agreement, including these Terms and Conditions of Service, constitute an offer for electric service, and is expressly conditioned on acceptance of this Agreement by Gexa. Gexa may refuse to provide electric service to Customer subject to the requirements of Applicable Law.