

**THE STATE OF TEXAS  
CITY OF RIO HONDO  
COUNTY OF CAMERON**

Rick Tello, Commissioner Place 1  
Margaret Perez, Commissioner Place 3  
Joseph Lopez, Commissioner Place 5

Steve Bocanegra, Commissioner Place 2  
Olga L. Gallegos, Commissioner Place 4

Gustavo Olivares  
Mayor

**Notice of a Regular Meeting of the  
City Commission of the City of Rio Hondo  
January 26, 2021**

Pursuant to Chapter 551, Tittle 5 of the Texas Government Code, the Texas Open Meetings Act, notice is hereby given that the governing body of the City of Rio Hondo, Texas will convene for a Regular Meeting at 6:30 p.m. on Tuesday January 26, 2021 at the **Civic Center** on the Second Floor of the Rio Hondo Municipal Building located at 121 N. Arroyo Blvd., Rio Hondo, Texas 78583.

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**PLEDGE OF ALLEGIANCE**

**UNITED STATES PLEDGE**

**INVOCATION:**

**Regular Agenda:**


1. Mayor's and Commissioner's Report
2. **Reports – Administration**
3. **Oath of Office of Mayor Gustavo Olivares.**
4. **Proclamation honoring Mrs. Rosa Salazar on her 100<sup>th</sup> Birthday**
5. **Public Comment Period: *Please Note- The Public Comment Period is designated for hearing concerns regarding City of Rio Hondo Public Policy or City of Rio Hondo business for both items not on the Agenda and items listed on the agenda.***
6. Consideration and Action on approving the December 15, 2020, January 12, 2021 minutes.
7. Consideration and Possible Action on a contract for electric energy with Verity Energy Group.
8. Presentation the City of Rio Hondo Wellness Program for the 2020 Year
9. Consideration and Action on a contract between the City of Rio Hondo and the University of Texas Health Science Center at Houston on behalf of the Department of Brownsville Regional campus, an

agency of the State of Texas and governed by the Board of Regents of The University of Texas System for a Wellness Program.

10. Consideration and Action on contract between Cameron County Emergency Services District No. 1 and the City of Rio Hondo for fire protection services.
11. Consideration and Action authorizing the City Administrator to negotiate the cost 24-acre feet of Push Water purchase from surrounding Irrigation Districts
12. Adjournment

Note: The City Commission for the City of Rio Hondo reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any matters, on the agenda as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).

***Note: The Meeting is accessible to Americans with Disabilities. Persons with disabilities who plan to attend this meeting and who may need assistance, please call the City Secretary at (956) 748-2102, with at least twenty-four hours prior to the meeting.***

  
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Gustavo Olivares  
Mayor of the City of Rio Hondo

**POSTED**

I, City Secretary for the City of Rio Hondo, do hereby certify that this Notice of Meeting is a true and correct record and was posted in the bulletin board outside City Hall, and the bulletin board in the City Hall lobby, at 121 N. Arroyo Blvd, Rio Hondo, Texas 78583 and remained so posted continuously for at least 72 hours preceding the scheduled time of said Meeting.

DATE: 1/22/2021 TIME: 4:00pm

City Administrator/City Secretary

# Minutes

## MINUTES FROM A REGULAR MEETING ON January 12, 2021

The Government Body of the City of Rio Hondo, Texas met in a Regular Meeting on January 12, 2021 at 6:30 pm in the Commission Chambers at City Hall, with Mayor-Pro Tem Margaret Perez presiding and Commissioners, Joseph Lopez- Present, Olga Gallegos- Present, Esteban Bocanegra- Present, and Rick Tello- Present, Mayor Gustavo Olivares, Absent.

### PLEDGE OF ALLEGIANCE

Commissioner Margaret Perez led the pledge at 6:30 p.m.

### INVOCATION:

Commissioner Joseph Lopez gave the invocation.

### Regular Agenda:

1. Mayor's and Commissioner's Report : Commissioner Lopez direct that the concrete box on Colorado and South Arroyo be fixed.
2. **Reports – Administration, Finance, Library, Senior Center, Public Works, Public Safety.**  
(Attached)
3. **Public Comment Period: *Please Note- The Public Comment Period is designated for hearing concerns regarding City of Rio Hondo Public Policy or City of Rio Hondo business for both items not on the Agenda and items listed on the agenda.* Adrian Salazar of Daylight Capital Advisors presented himself in assisting with Municipal Advisory Services.**
4. Presentation by Nathen Hartwell of Verity Energy Group. Nathan Hartwell presented and provided graphs showing what could be done in saving if signing with them. No action was taken.
5. Consideration and Action Resolution 2021-001 Authorizing the award of Professional Services Provider contract for the 2021-2022 Texas Community Development Block Grant Community Development Block Grant Fund. Commissioner Margaret Perez read Resolution 2021-001. Commissioner Joseph Lopez made a motion to approve the Resolution 2021-001 and seconded by Commissioner Esteban Bocanegra and the motion was passed unanimously.
6. Consideration and Action on Resolution 2021-002 Authorizing the submittal of an application to the Office of the Governor of Texas for a Criminal Justice Grant. Mr. Medina mentioned about getting a new police vehicle- full package. Motion to approve by Commissioner Rick Tello and seconded by Commissioner Joseph Lopez. The motion passed unanimously.
7. Consideration and Action on Resolution 2021 – 003 Authorizing the submittal of an application to the Office of the Governor of Texas for a Homeland Security Grant. Commissioner Lopez mentioned the doorstopper from the lobby to the office and seeing about doing something to make more secure. Motioned was made by Commissioner Joseph Lopez and seconded by Esteban Bocanegra and the motion passed unanimously.

8. Consideration and Action Requesting Qualifications for Municipal Judge. Commissioners addressed if pay will be negotiable and to add no less than 5 years of experience, in good standings and recommendation letter from JP where they practice in the requirements. Motion was made by Commissioner Joseph Lopez and seconded by Commissioner Rick Tello. The motion passed unanimously. Motion passed unanimously
9. Canvass of Run-Off General Election Votes of the City of Rio Hondo December 19, 2020 election. Mr. Medina read the canvass report stating Gustavo Olivares with a total of 232 votes and Nelda V. Lopez with a total of 178. Motion passed unanimously
10. Consideration and Action to authorize the Mayor to execute the documentation of the canvass as the Presiding Officer of the Canvassing Authority and authorization to issue Certificates of Election to the Mayor of the City of Rio Hondo and to submit to the Texas Secretary of State the appropriate documents. Commissioner Rick Tello made the motion and was seconded by Esteban Bocanegra. Motion passed unanimously
11. Adjournment. Commissioner Rick Tello made the motion to adjourn seconded by Commissioner Joseph Lopez.

City Administrator/City Secretary

## MINUTES FROM A SPECIAL MEETING ON December 15, 2020

The Government Body of the City of Rio Hondo, Texas met in a Special Meeting on January 15, 2020 at 6:30 pm in the Senior Center at City Hall, with Mayor Olivares presiding and Commissioners, Joseph Lopez- Present, Olga Gallegos- Present, Esteban Bocanegra- Present, Mayor Pro-Tem Margaret Perez, present and Rick Tello- Present, Joseph Lopez, Absent.

### PLEDGE OF ALLEGIANCE

Commissioner Margaret Perez led the pledge at 6:30 p.m.

### INVOCATION:

Mayor Olivares led the invocation.

### Regular Agenda:

1. Mayor Olivares welcomed guests, City Commission and staff.
2. **Public Comment Period: *Please Note- The Public Comment Period is designated for hearing concerns regarding City of Rio Hondo Public Policy or City of Rio Hondo business for both items not on the Agenda and items listed on the agenda.***  
**No Public Comments**

Workshop on Freedom of Information Act and Texas Open Meetings Act and other related Public Officials Training was led by Rebecca Haywood and Robert Drinkard from the firm of DENTON, NAVARRO, ROCHA, BERNAL & ZECH, P.C. Presentation is attached.

3. Adjournment Meeting was adjourned at 8.05 pm

City Administrator/City Secretary

# **Verity Energy Group**

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## Contract for Supply of Electricity

Quote Number:	S0337334	Product:	Fixed Price / DMAC / ZONE
Business Partner:	0026943578		
Buyer:	CITY OF RIO HONDO  121 W Arroyo Blvd RIO HONDO, TX 78583-3035	Seller:	TXU Energy Retail Company LLC REP Certification No. 10004 6555 Sierra Drive 1-W-1 Irving, Texas 75039 Attn: Retail Contract Administration
Phone:	(956) 748-2102	Fax:	
		Phone:	(866) 576-6745
		Fax:	(972) 556-6108

### I. TERM

**Primary Term:** The Primary Term for each Premise will begin on the first meter read, and end on the first regularly scheduled meter read, for each Premise occurring on or after the dates listed below in compliance with the Terms and Conditions.

**Primary Term Start Date:** June 1, 2024

**Primary Term End Date:** May 31, 2030

### II. CHARGES

CHARGE	AMOUNT (Monthly Charges will be the total of the items listed in this Article II.)
(i) All kWh Charge (the per kWh "Contract Price")	\$0.0379043 per kWh.  The All kWh Charge includes charges for the commodity (including the price impact, if any, resulting from the implementation of the Operating Reserve Demand Curve ("ORDC")), Energy (shaped), Ancillary Services, Qualified Scheduling Entity Charges, Renewable Energy Credit Charges, Reliability Must Run ("RMR"), Reliability Unit Commitment ("RUC"), Line Losses (TDSP), Market Clearing Price for Capacity, ERCOT Administration Fee/ISO Fees, and Unaccounted for Energy ("UFE") as defined and specified in the ERCOT Protocols and the applicable TDSP's Tariff in effect as of the date of this Agreement. It will also include the settlement charges for Congestion to the applicable ERCOT Load Zone.
(ii) Standing Charge	The sum of the Monthly Standing Charges for all ESI IDs as listed in Exhibit A.
(iii) Other Charges	<b>Varies by ESI ID throughout the Term.</b> All charges, other than those listed above or below, imposed upon Seller or Buyer by the TDSP or another party that are allowed or required by the PUCT, ERCOT, or any other governmental or regulatory authority, on or with respect to the acquisition, sale, delivery, and purchase of the Power.
(iv) Taxes	<b>Varies by ESI ID throughout the Term.</b> All taxes imposed by any governmental or regulatory authority on the acquisition, sale, delivery, and purchase of the Power. Includes, but is not limited to, Seller's Texas Gross Receipts Tax and Public Utility Commission Assessment on the acquisition, sales, delivery, or purchase of the Power.
(v) Aggregator/Third Party Fee	The pricing under this Agreement reflects a payment to Verity Power Group in connection with its efforts to facilitate Buyer and Seller entering into this Agreement.

### III. BILLING

**Payment Terms:** Net 30 days from the date of the invoice via Check

### IV. SPECIAL PROVISIONS

**INITIAL SECURITY:** An initial cash deposit in the amount of \$0.00 is required within sixteen (16) days from the issuance date of the invoice for the deposit. Once received, the cash deposit may be replaced by a surety bond, or an irrevocable letter of credit either of which shall be (i) in a form reasonably acceptable to Seller, (ii) from an institution reasonably acceptable to Seller, and (iii) in the same dollar amount as the cash deposit. The security shall remain in effect until at least two (2) months after the Primary Term End Date.

**TXU ENERGY GREENBACK PROGRAM:** As a result of executing this Contract for the Supply of Electricity, Buyer is eligible to participate in Seller's Greenback Program and receive up to a total of \$2,300.00 in rebates for qualifying energy efficiency work performed and completed at Buyer's Premises **after execution of this Contract for the Supply of Electricity**. Funds will be available starting on the Primary Term Start Date and documentation for all such work must be submitted to Seller within one year of this date (i.e., Buyer must provide all appropriate documentation to Seller, in the form of invoices and/or contracts for all completed qualifying energy efficiency work, on or before such date or the remaining unpaid rebates will expire at that time). Seller shall have the right to audit Buyer's facilities to verify any energy efficiency work submitted for the payment of rebates. The foregoing shall not be construed to relieve Buyer from its obligation to purchase monthly contract quantities as otherwise provided in this Agreement.

### V. TERMS AND CONDITIONS

The attached Terms and Conditions, Exhibit A, Exhibit A-1, and other attachments, as applicable, are incorporated herein by reference.

Buyer Legal Name: CITY OF RIO HONDO a Texas political subdivision	Seller Legal Name: TXU Energy Retail Company LLC, a Texas limited liability company
By (Name of General Partner or Agent if applicable):  Its General Partner	
Buyer Signature:	Seller Signature:
Officer's Printed Name:	Officer's Printed Name:
Title:	Date:
	Title: Vice President
	Date:



## TERMS AND CONDITIONS



[Note: Gray highlighting indicates sections impacted by governmental addendum.]

### I. DEFINITIONS

"Agreement" means the Contract for the Supply of Electricity that is subject to these Terms and Conditions.  
"ERCOT" means the Electric Reliability Council of Texas, Inc.  
"ESI ID" means an Electric Service Identifier designation for a particular TDSP Point of Delivery.  
"POLR" means the provider of last resort as designated by the PUCT.  
"Power" means all of Buyer's non-residential electricity requirements for each of the Premise(s).  
"PUCT" means the Public Utility Commission of Texas.  
"Premise" means individually, and "Premises" means collectively, each parcel of real property and improvements identified on Exhibit A.  
"REP" means a retail electric provider that is certified by the PUCT.  
"Seller Point of Delivery" means the point where Seller's suppliers' conductors are connected to the applicable TDSP's conductors.  
"TDSP Point of Delivery" means the point where the applicable TDSP's conductors are connected to Buyer's conductors at or near Buyer's Premise(s).  
"TDSP" means a transmission and/or distribution provider under the jurisdiction of the PUCT that owns and maintains a transmission or distribution system for the delivery of energy.  
"Term" means the time period during which the Agreement is effective as specified in Article I of the Agreement.  
"Terms and Conditions" means these Terms and Conditions for Supply of Electricity.  
Capitalized terms not defined in these Terms and Conditions shall have the meaning identified in the Agreement.

II. SUBJECT MATTER AND QUANTITY. During the Term Seller shall sell to Buyer and Buyer shall purchase from Seller all of Buyer's Power for the listed Premises. Seller shall cause delivery of the Power to the applicable Seller Point(s) of Delivery and Buyer shall receive the Power at the ESI ID(s) at the TDSP Point(s) of Delivery. Buyer shall use the Power only at the Premise(s). A Premise may have one or more TDSP Points of Delivery.

### III. SECURITY AND CREDIT REQUIREMENTS.

Buyer shall provide the amount of security, if any, stated in Article IV ("Special Provisions") of the Agreement before the Primary Term Start Date. Additionally, if at any time prior to the end of the Agreement Seller later determines in good faith that there has been a material adverse change in Buyer's or Buyer's Parent's credit status or financial condition and/or in electricity market conditions and/or Buyer fails to pay all Charges when due, Seller may demand security (or additional security if initial security was previously provided) from Buyer in an amount and form reasonably acceptable to Seller. Buyer shall provide security to Seller within five (5) business days of such request. Seller shall return the security (and accrued interest, if applicable, at the One Year Treasury Constant Maturity index published by the Federal Reserve Board as of the first auction date after January 1 of the applicable year) less any amounts owed by Buyer under the Agreement, when Seller reasonably determines that such security is no longer necessary.

### IV. CALCULATION AND PAYMENT OF CHARGES.

4.1 Seller will invoice Buyer for the Charges listed in Article II ("Charges") of the Agreement for Power delivered to the Premise(s) during each monthly billing cycle of the Term. Buyer shall pay Seller the Charges identified on each invoice by the due date listed in Article III ("Billing") of the Agreement. All past due amounts shall accrue interest at a rate equal to one percent (1%) above the "Prime Rate" published in The Wall Street Journal under "Money Rates" or an appropriate substitute should such rate cease to be published, unless a lesser amount is required by law, from the date the payment was originally due until paid (including accrued interest).

4.2 Intentionally Deleted.

4.3 Intentionally Deleted.

4.4 (a) Seller reserves the right to allocate measured consumption to the applicable calendar month for any ESI IDs not installed with an interval data recorder ("IDR"), or for IDRs for which IDR information was not received by Seller in a useable format. (b) If, for whatever reason, the proper meter readings are not communicated to Seller by the TDSP in time for Seller to prepare the invoice for the Charges, Seller shall have the right to reasonably estimate the quantity of the electricity consumed and Buyer shall pay the Charges for the estimated amounts subject to any adjustments which may be necessary following the reading. (c) It is recognized by the Parties hereto that ERCOT has established time periods for disputing and/or correcting certain matters related to the settlement of energy charges. Therefore, notwithstanding any other provisions of the Agreement, in the event of a dispute and/or possible correction, relating to the Agreement, which would involve a settlement with ERCOT that is barred by ERCOT (an "ERCOT Barred Issue"), then, to the extent that adjustment or settlement of such matter via the ERCOT energy settlement process cannot occur as a result of it being an ERCOT Barred Issue, the subject statement, invoice, notice or other matter that is at issue under this Agreement may not be adjusted, but only with respect to such ERCOT Barred Issue (d) If, during the term of this Agreement, Buyer's actual monthly usage for two consecutive calendar months materially differs (i.e., increases or decreases by more than 25%) from the monthly contract quantities provided for in this Agreement for each such month, then, upon notice from one Party to the other Party, the Parties agree to (i) work in good faith with one another to reasonably adjust the remaining contract quantities on a forward basis, and (ii) pass through any credits or costs as reasonably determined by Seller associated with effectuating such adjustment. In such event, Buyer may choose whether such credits or costs are passed through (1) as a single amount, or (2) on a monthly basis over the remaining Term.

4.5 Seller, in its sole discretion, may (as a result of PUCT rules that forbid a REP from switching a customer to the POLR) direct the TDSP to disconnect electric service to the Premise(s) under the Agreement (i) upon expiration or termination of this Agreement for any reason, if Buyer has not executed a replacement agreement with Seller or switched to another electricity provider for the applicable Premise(s), or (ii) at any time thereafter, until Buyer either executes a replacement agreement with Seller or switches to another electricity provider for the applicable Premise(s). In any event, if Seller is ever determined to have been Buyer's electricity supplier for a period after the expiration or termination of the Agreement, then Seller may charge Buyer, as the Contract Price for Power utilized at such Premise(s) during such period, a price per kWh equivalent to Seller's then current "standard list price offer," and the other terms governing such sale shall be identical to those applicable to sales that occurred prior to the termination/expiration of the Agreement.

4.6 (a) If (i) Buyer changes any TDSP Point of Delivery for a Premise to a delivery service voltage level that is different than the voltage level in place for such TDSP Point of Delivery at the time the Agreement became effective, or Buyer changes the existing electric meter at any TDSP Point(s) of Delivery for a Premise to a different size/capacity than the size/capacity in place at the time the Agreement became effective, (ii) Buyer causes the ERCOT Deemed Load Profile Type for any of its Premises to change, or (iii) Seller's cost to serve Buyer under the Agreement is otherwise increased as a result of judicial, governmental, quasi-governmental (e.g., ERCOT) or regulatory action, (including, but not limited to, actions with regard to congestion zones, nodal congestion, carbon cap/trade/remediation, renewable energy sources or standards, etc.), then Seller may adjust the Contract Price under the Agreement in order to reflect the increased cost to Seller of serving Buyer thereunder as a result of any such change(s). Seller shall provide Buyer with written notice of the adjustment to the Contract Price pursuant to this Section 4.6, along with a written explanation of the change that includes the effective date of the adjustment and the circumstances giving rise to the increased cost to Seller. Provided, however, in the event that Seller ever does so adjust the Contract Price under the Agreement pursuant to this Section 4.6, Buyer shall have the right, within thirty (30) calendar days after Seller's notice of such increase in the Contract Price, to terminate the Agreement upon thirty (30) calendar days prior written notice to Seller; provided further, however, in the event that Seller should sustain a loss in liquidating the remaining Power quantities under the Agreement as a result of Buyer exercising such right to terminate the Agreement, Buyer agrees to reimburse Seller the amount equal to the product of (i) the remaining quantities of electricity reflected on Exhibit A-1 after such termination multiplied by (ii) the Contract Price minus the then current market value as reasonably determined by Seller. Such amount shall be due and payable on or before the date of Buyer's termination.  
(b) During the Agreement Term, Buyer shall not consume electricity at any Premises from any source (including self-generation) except for Power sold by Seller under the Agreement; however, Buyer may consume electricity from emergency generation during power outages at the Premises and for purposes of testing such emergency generation.

### V. ADDITION AND REMOVAL OF PREMISES.

5.1 (a) Buyer shall have the limited right to add ESI IDs to, or delete some but not all ESI IDs from, this Agreement. The addition and deletion of ESI IDs will be done without modifying the aggregated quantities of electricity set forth on Exhibit A-1, until the cumulative total quantities of electricity attributable to all such additional and/or deleted ESI ID(s) equal ten percent (10%) of the aggregated quantities originally listed on Exhibit A-1 for the Primary Term of the Agreement (the "Add/Delete Tolerance Range"). Buyer may make a request to add ESI IDs once per business day as a single combined addition request, and Buyer may make a request to delete ESI IDs once per business day as a single combined deletion request. In either such event, in order to initiate either the addition or the deletion of ESI IDs from this Agreement, Buyer shall submit its request to Seller with as much prior notice as is practicable, using Seller's then current form for such request. Seller shall reasonably determine the quantities of electricity that are applicable to each added or deleted ESI ID, and Seller will examine all requests in order to determine whether the request(s) is within the Add/Delete Tolerance Range. There shall not be any "netting" of additions and deletions; each request to either add or delete shall be a separate request. Exhibit A shall be deemed modified to reflect the addition and/or deletion of such ESI IDs. Buyer's sending of a request to Seller to add or delete ESI IDs shall be considered Buyer's authorization to charge the cost of the request, as provided below, once Buyer has reached the Add/Delete Tolerance Range as the result of ESI ID additions and/or deletions.

(b) Once Buyer has reached the Add/Delete Tolerance Range as the result of ESI ID additions and/or deletions, with regard to (i) any future ESI ID addition(s) and (ii) if applicable, any portion of the addition request that caused Buyer to exceed the Add/Delete Tolerance Range, Seller shall have the right to charge Buyer up to the total cost of such request, i.e., the positive amount, if any, calculated as follows: [(the kWh amount of the quantities of electricity attributable to the ESI ID addition request, the "ESI ID Additional Quantities") multiplied by (the then current market based pricing per kWh as reasonably determined by Seller, minus the contract price per kWh according to the Agreement)] (the "ESI ID Addition Payment"). Upon being invoiced by Seller, Buyer shall pay such amount to Seller within twenty (20) calendar days. Exhibits A and A-1 shall be deemed modified to reflect the addition of such ESI IDs and associated electricity quantities. Any ESI IDs and associated ESI ID Additional Quantities added hereunder to this Agreement shall be subject thereafter to the contract pricing, monthly contract usage tolerances and other provisions of this Agreement.

(c) Once Buyer has reached the Add/Delete Tolerance Range as the result of ESI ID additions and/or deletions, then with regard to (i) any future ESI ID deletion(s) and (ii) if applicable, any portion of the deletion request that caused Buyer to exceed the Add/Delete Tolerance Range: (1) In the event a new owner or lessee of a Premise (i) is willing to sign a new Agreement with Seller for such Premise using Seller's then standard form of contract with the same pricing as this Agreement, (ii) is deemed creditworthy in Seller's reasonable opinion, and (iii) the new owner or lessee and Seller can legally enter into such Agreement in accordance with the rules and regulations of the PUCT, then, provided that such new Agreement is fully executed between the new owner or lessee and Seller, the Premise (and the associated ESI IDs and electricity quantities) will be deleted from this Agreement and Buyer will not owe any compensation to Seller with respect to such deletion (a "Premise Buyout"); otherwise, (2) Seller shall have the right to charge Buyer up to the total cost of such request, i.e., the positive amount, if any, calculated as follows: [(the kWh amount of the quantities of electricity attributable to the ESI ID deletion request, the "ESI ID Liquidated Quantities") multiplied by (the Contract Price per kWh that Buyer would have paid for the ESI ID Liquidated Quantities through the end of the Agreement Term according to this Agreement, minus ninety-five percent (95.0%) of the then current market value as reasonably determined by Seller)] (the "ESI ID Liquidation Payment"). Upon being invoiced by Seller, Buyer shall pay the amount of the ESI ID Liquidation Payment to Seller within twenty (20) calendar days. In either event, Exhibits A and A-1 shall be deemed modified to reflect the deletion of such ESI IDs and associated electricity quantities.

### VI. REMEDIES UPON TERMINATION.

6.1 A material breach of the Agreement includes: (a) the failure of either Party to make any payment due to the other Party pursuant to the terms of the Agreement and such failure is not cured within ten (10) calendar days following written notice of such failure describing the breach in reasonable detail; (b) the failure of a Party to comply with any other material term of the Agreement when such failure is not cured within thirty (30) calendar days following written notice of such failure describing the breach in reasonable detail; (c) a Party becomes or declares that it is bankrupt, or becomes or declares that it is the subject of any proceedings, or takes any action whatsoever, relating to its bankruptcy or liquidation, or is not generally paying its debts as they become due; (d) Buyer enters into another electricity supply agreement for any Premise(s) with another REP that covers any period during the Agreement Term; (e) Buyer sells, leases, closes or otherwise conveys or assigns any of the Premises, except as allowed under Article IV ("Special Provisions") of the Agreement, Article V ("Addition and Removal of Premises") or Section 12.2 ("Assignment") hereof; (f) Buyer's total monthly usage ever decreases to a de minimis amount or fails to exceed a de minimis amount for reasons other than Force Majeure or Seller's breach; (g) any representation of a Party hereunder is not true and correct in all material respects as of the date this Agreement is entered into; or (h) the failure of Buyer to timely pay security to Seller as may be required hereunder. In the event of a material breach of the Agreement by either Party, the non-breaching Party may, in its sole discretion, and without prejudice to any other rights under the Agreement, at law or in equity, immediately terminate the Agreement.

6.2 (a) If Seller terminates the Agreement due to a material breach by Buyer, (i) Seller may (as a result of PUCT rules that forbid a REP from switching a customer to the POLR) direct the TDSP to disconnect electric service to the Premise(s) covered hereunder, except as may be prohibited by law, and (ii) within thirty (30) calendar days following such termination, Buyer shall pay Seller, in addition to all reasonable direct costs and expenses incurred by Seller as a result of such material breach and termination, and all amounts Buyer owes Seller with respect to time periods prior to the termination, the positive amount, if any, calculated as follows as of the date of termination: the sum of (A) the product of (i) the remaining quantities of electricity for the remainder of the Agreement Term as reflected on Exhibit A-1 ("The Remaining Quantities") multiplied by (ii) the Contract Price under the Agreement minus the then-current market value of a kWh as reasonably determined by Seller plus (B) the value of any term extension option rights, if any, that Seller may have under the Agreement.

(b) If Buyer terminates the Agreement due to a material breach by Seller, (i) Buyer shall have the right to select any other REP as its electricity provider, and (ii) within thirty (30) calendar days following such termination, Seller shall pay or credit Buyer, in addition to all reasonable direct costs and expenses incurred by Buyer as a result of such material breach and termination, the positive amount, if any, calculated as follows: the product of (A) the Remaining Quantities multiplied by (B) the sum of (i) the lesser of (1) the then current market value of a kWh as reasonably determined by Seller, (2) the price offered by the POLR, or (3) any REP's standard list price offer (or equivalent or similar pricing), minus (ii) the Contract Price.

VII. FORCE MAJEURE. If either Party is unable to perform its obligations, in whole or in part, due to an event of Force Majeure as defined herein, then the obligations of the claiming Party (other than the obligations to pay any amounts arising prior to the Force Majeure event) shall be suspended, for the duration of such Force Majeure event, to the extent made necessary by such Force Majeure event. The term "Force Majeure" shall mean any act or event that is beyond the claiming Party's control (and which could not be reasonably anticipated and prevented through the use of reasonable measures), including, without limitation, the failure of the TDSP to receive, transport or deliver, or otherwise perform, unless due to the failure of the Party claiming Force Majeure to perform such Party's obligations hereunder, and an event of Force Majeure that affects Seller's suppliers. The Party suffering the event of Force Majeure shall give written notice of such event of Force Majeure in reasonably full particulars to the other Party, as soon as reasonably possible, and shall take all reasonable measures to reduce to such as practicable the duration of such Force Majeure event. Force Majeure shall not include (a) the opportunity for Seller to sell the electricity to be sold under the Agreement to another party at a higher price than that set forth in the Agreement, (b) the opportunity for Buyer to purchase electricity for its Premise(s) from another party at a lower price than that set forth in the Agreement, or (c) the inability of either Party to pay its obligations under the Agreement or any other of its obligations or debts as they become due.

### VIII. WARRANTIES AND LIMITATIONS OF LIABILITIES.

8.1 SELLER HEREBY WARRANTS TO BUYER THAT AT THE TIME OF DELIVERY OF ELECTRICITY HEREUNDER IT WILL HAVE GOOD TITLE AND/OR THE RIGHT TO SELL SUCH ELECTRICITY, AND THAT SUCH ELECTRICITY WILL BE FREE AND CLEAR OF ALL LIENS AND ADVERSE CLAIMS. TITLE WILL PASS TO BUYER AT THE TDSP POINT OF DELIVERY. EXCEPT AS PROVIDED FOR IN THE FIRST SENTENCE OF THIS SECTION 8.1, SELLER

EXPRESSLY DISCLAIMS AND MAKES NO WARRANTIES, WHETHER WRITTEN OR VERBAL, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS, IMPLIED, OR STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND BUYER WAIVES ALL SUCH WARRANTIES.

8.2 UNLESS OTHERWISE EXPRESSLY PROVIDED HEREIN, ANY LIABILITY OF A PARTY TO THE OTHER PARTY UNDER THE AGREEMENT WILL BE LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER IN TORT OR CONTRACT OR OTHERWISE IN CONNECTION WITH THE AGREEMENT. THE LIMITATIONS IMPOSED IN THIS PARAGRAPH ON REMEDIES AND DAMAGE MEASUREMENT WILL BE WITHOUT REGARD TO CAUSE OF THE DAMAGES, INCLUDING NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE; PROVIDED NO SUCH LIMITATION SHALL APPLY TO DAMAGES RESULTING FROM THE WILLFUL AND INTENTIONAL MISCONDUCT OF ANY PARTY, OR TO DAMAGES COVERED BY ANY INDEMNIFICATION UNDER ARTICLE XI BELOW.

IX. NOTICES. All notices required or permitted under the Agreement shall be in writing and shall be deemed to be delivered (a) when (i) deposited in the United States mail (first class as to all notices other than disconnection, termination and/or material breach notices, and registered or certified as to all disconnection, termination and/or material breach notices), postage prepaid; or (ii) deposited with an overnight delivery service, prepaid, to Buyer's address or Seller's address as shown at the beginning of the Agreement, or to such address as either Party may from time to time designate as its address for notices hereunder, or (b) in the case of hand delivery, when delivered to a representative of either Party by or on behalf of the other Party.

#### X. APPLICABLE LAW AND REGULATIONS.

10.1 The applicable Tariff(s) for Retail Delivery Service (the "Tariff") of the appropriate TDSP(s) serving Buyer's Premise(s) is incorporated herein to the same extent as if fully set forth herein.

10.2 The Agreement is subject to, and both Parties agree to obey and comply with, all applicable laws, regulations, rules and orders. However, notwithstanding the foregoing, both Parties agree that, to the fullest extent allowed by law, (i) it is their intention to agree to terms and conditions different from those set forth in the "Customer Protection Rules for Retail Electric Service" as amended, or as may be amended in the future (the "Customer Rules") currently beginning with Section 25.471 of the PUCT's Substantive Rules Applicable to Electric Service Providers; (ii) in the event that there is any conflict between the terms contained in the Agreement and the Customer Rules, the Agreement shall control; and (iii) the Parties expressly acknowledge that certain terms and conditions addressed in the Customer Rules may not be provided for or referred to in the Agreement, and, in such event, it is the intent of the Parties that such terms and conditions are not applicable to the Parties.

10.3 In the event a judicial, governmental, regulatory, or quasi-governmental decision or order, new law or regulation, or a change in law or regulation (i) renders illegal or unenforceable the pricing (or components thereof) under the Agreement, or (ii) materially and directly adversely affects a Party's ability to perform its material obligations under the Agreement to the extent that the performance of such obligations would be illegal or unenforceable, then (except as to those events covered by Section 4.6 (a) hereof) the Party that is adversely affected shall have the right to notify the other Party, within forty-five (45) calendar days after becoming aware of such detrimental change. Upon any such notification, the Parties shall use commercially reasonable efforts to negotiate a modification of the Agreement so as to mitigate the impact of the event. If, after thirty (30) calendar days beyond the date of notice, the Parties have been unable to negotiate a mutually satisfactory modification to the terms of the Agreement, the adversely affected Party shall have the right to terminate the Agreement upon ten (10) calendar days prior written notice to the other Party, given within sixty (60) calendar days after the date of the original notice hereunder. In the event of such a termination, the Parties agree to settle as follows: (a) if Seller is the terminating Party, then if the then current market value per kWh (as reasonably determined by Seller) of the Remaining Quantities (as defined in Section 6.2(a) above is greater than the Contract Price, Seller shall pay to Buyer the product of (i) the Remaining Quantities multiplied by (ii) such market value minus the Contract Price; (b) if Buyer is the terminating Party, then in the event the Contract Price is more than the then current market value per kWh (as reasonably determined by Seller) of the Remaining Quantities, then Buyer shall pay to Seller the product of (i) the Remaining Quantities multiplied by (ii) the Contract Price minus such market value; provided, however, if the detrimental change results in both Parties being an adversely affected Party entitled to terminate the Agreement pursuant to this Section 10.3, then in the event of a termination under this Section 10.3, there shall be no settlement payment from one Party to the other with regard to the remaining unused Power quantities.

#### XI. INDEMNIFICATION.

11.1 As between the Parties, Buyer assumes full responsibility for electric energy on Buyer's side (downstream) of the TDSP Point of Delivery, and agrees to and shall indemnify, defend, and hold harmless Seller, its parent company and all of its affiliates (except any which may be the TDSP serving Buyer's Premise(s)), and all of their respective officers, directors, shareholders, associates, employees, servants, and agents (hereinafter collectively referred to as "Seller Group"), from and against all claims, losses, expenses, damages, demands, judgments, causes of action, and suits of any kind (hereinafter collectively referred to as "Claims"), including Claims for personal injury, death, or damages to property, occurring on Buyer's side of the TDSP Point of Delivery, arising out of or related to the electric power and energy and/or Buyer's performance under the Agreement.

11.2 As between the Parties, Seller assumes full responsibility for electric energy on Seller's side (upstream) of the Seller Point of Delivery, and agrees to and shall indemnify, defend, and hold harmless Buyer, its parent company and all of its affiliates, and all of their respective officers, directors, shareholders, associates, employees, servants, and agents (hereinafter collectively referred to as "Buyer Group"), from and against all Claims, including Claims for personal injury, death, or damages to property occurring on Seller's side of the Seller Point of Delivery, arising out of or related to the electric power and energy and/or Seller's performance under the Agreement.

#### XII. MISCELLANEOUS.

12.1 UCC. THE PARTIES AGREE THAT THE PROVISIONS OF ARTICLE 2 OF THE UNIFORM COMMERCIAL CODE (AS CONTAINED IN THE TEXAS BUSINESS AND COMMERCE CODE) SHALL APPLY TO THE AGREEMENT AND ALL TRANSACTIONS THEREUNDER, IRRESPECTIVE OF WHETHER SUCH TRANSACTIONS ARE DEEMED TO BE A SALE OF GOODS OR THE PROVIDING OF A SERVICE; HOWEVER, IN THE EVENT OF A CONFLICT, THE TERMS AND PROVISIONS OF THE AGREEMENT SHALL CONTROL OVER THOSE CONTAINED IN THE UCC. NOTWITHSTANDING THE FOREGOING, THE PARTIES ACKNOWLEDGE AND AGREE THAT ALL IMPLIED RIGHTS RELATING TO FINANCIAL ASSURANCES ARISING FROM SECTION 2-609 OF THE UNIFORM COMMERCIAL CODE (AS CONTAINED IN THE TEXAS BUSINESS AND COMMERCE CODE) OR APPLICABLE CASE LAW APPLYING SIMILAR DOCTRINES, ARE HEREBY WAIVED.

12.2 Assignment. Neither Party may assign the Agreement in whole or in part without first obtaining the other Party's prior written consent, which consent shall not be unreasonably withheld; provided that (i) Seller may assign the Agreement to any REP without obtaining Buyer's prior consent and (ii) Seller will not withhold its consent if Buyer makes assignment to a party who in Seller's reasonable opinion is creditworthy. Any assignment of the Agreement by Buyer must be in conjunction with a conveyance of legal title to all of the Premises to a single entity. The Agreement shall inure to and be binding upon the Parties hereto, and their respective successors and assigns; provided that, if a Party makes a valid assignment of the Agreement, the other Party hereby agrees that the assigning party is released from its future obligations under the Agreement.

12.3 Entirety of Agreement. The Parties each acknowledge that they are relying on their own judgment and it is the intention that the Agreement (i) shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of the electricity, and (ii) supersedes, and the Parties hereby expressly disclaim any reliance upon, all prior discussions and agreements between the Parties hereto, whether written or oral, as to the subject Premise(s). Both Parties have agreed to the wording of the Agreement and any ambiguities therein shall not be interpreted to the detriment of

either Party merely by the fact that such Party is the author of the Agreement. The Agreement may not be modified or amended except in writing, duly executed by the Parties hereto.

12.4 Waiver of Rights. A waiver by either Party of any breach of the Agreement, or the failure of either Party to enforce any of the terms and provisions of the Agreement, will not in any way affect, limit or waive that Party's right to subsequently enforce and compel strict compliance with the same or other terms or provisions of the Agreement.

12.5 Third Party Beneficiary/Rights. Nothing in the Agreement shall create, or be construed as creating, any express or implied benefits or rights in any person or entity other than the Parties.

12.6 Survival. No termination or cancellation of the Agreement will relieve either Party of any obligations under the Agreement that by their nature survive such termination or cancellation, including, but not limited to, all warranties, obligations to pay for Power consumed, obligations for any breaches of contract, and obligations of indemnity.

12.7 Confidentiality. Seller and Buyer agree to keep all terms and provisions of the Agreement confidential and not to disclose the terms of the same to any third parties without the prior written consent of the other Party; provided, however, each Party shall have the right to make such disclosures, if any, to governmental agencies and to its own agents, attorneys, auditors, accountants and shareholders as may be reasonably necessary. If disclosure is sought through process of a court, or a state or federal regulatory agency, the Party from whom the disclosure is sought shall resist disclosure through all reasonable means and shall immediately notify the other Party to allow it the opportunity to participate in such proceedings.

12.8 Forward Contract. The Agreement constitutes a "forward contract" as defined in Section 101(25) of the U.S. Bankruptcy Code ("Bankruptcy Code"). The Parties agree that (i) Seller is a "forward contract merchant" as defined in Section 101(26) of the Bankruptcy Code, (ii) the termination rights of the Parties will constitute contractual rights to liquidate transactions, (iii) any payment related hereto will constitute a "settlement payment" as defined in Section 101 (51A) of the Bankruptcy Code, and (iv) Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code shall apply to the Parties.

12.9 Representations and Warranties. Buyer hereby represents and warrants to Seller as follows: (a) Buyer is legally authorized to change the REP for all of the Premises, (b) Buyer's execution and delivery of this Agreement does not, and the performance by Buyer of its obligations hereunder will not, violate any contract or agreement to which Buyer is a party or pursuant to which its assets are bound, and (c) this Agreement is a valid and binding obligation of Buyer, enforceable against it in accordance with its terms. Upon execution of the Agreement, Buyer authorizes Seller to become Buyer's REP for the Agreement Term as to the Premise(s) covered by this Agreement and to act as Buyer's agent for the sole purpose of effecting any such change in REP, if necessary. If any of Buyer's representations or warranties hereinabove are untrue when made or fail to be true at all times during the Agreement Term, Buyer shall indemnify, defend and hold Seller harmless from and against any third party claims (and related costs and expenses) arising out of or relating thereto.

12.10 Further Assurances. Buyer and Seller agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party, which are not inconsistent with the provisions of the Agreement and which do not involve the assumption of obligations other than those provided for in the Agreement, in order to give full effect to the Agreement and to carry out the intent of the Agreement.

12.11 Headings. The headings included throughout the Agreement are inserted solely for convenience and reference purposes only and shall not be construed or considered in interpreting any terms or provisions of the Agreement.

12.12 Severability. If any provision in the Agreement is determined to be invalid, void, or unenforceable by any governmental authority having jurisdiction, then such determination will not invalidate, void, or make unenforceable any other provision or covenant in the Agreement.

12.13 Applicable Law. ALL AGREEMENTS SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAWS PRINCIPLES WHICH OTHERWISE MIGHT BE APPLICABLE. THE PARTIES RECOGNIZE THAT THE AGREEMENTS ARE PERFORMABLE IN PART IN DALLAS COUNTY.

12.14 Dispute Resolution. PURSUANT TO THE FEDERAL ARBITRATION ACT, THE PARTIES HEREBY AGREE THAT ANY CONTROVERSY, CLAIM OR ALLEGED BREACH, INCLUDING BUT NOT LIMITED TO TORTS AND STATUTORY CLAIMS, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE NEGOTIATION OF THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION CONDUCTED UNDER THE AMERICAN ARBITRATION ASSOCIATION ("AAA") COMMERCIAL ARBITRATION RULES. DEMAND FOR ARBITRATION MUST BE MADE NO LATER THAN THE TIME THAT SUCH ACTION WOULD BE PERMITTED UNDER THE APPLICABLE TEXAS STATUTE OF LIMITATION. ANY DISPUTES REGARDING THE TIMELINESS OF THE DEMAND FOR ARBITRATION SHALL BE DECIDED BY THE ARBITRATOR(S). JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF IN ORDER TO OBTAIN COMPLIANCE THEREWITH. ANY CASE IN WHICH ANY CLAIM, OR COMBINATION OF CLAIMS, EXCEEDS \$500,000 WILL BE DECIDED BY THE MAJORITY OF A PANEL OF THREE (3) NEUTRAL ARBITRATORS. IN RENDERING THE AWARD, THE ARBITRATOR(S) WILL DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES ACCORDING TO THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO ANY CONFLICT OF LAW PRINCIPLES). ANY DISCOVERY IN ADVANCE OF THE ARBITRATION HEARINGS SHALL BE CONDUCTED CONSISTENT WITH THE DISCOVERY PERMITTED UNDER THE FEDERAL RULES OF CIVIL PROCEDURE; PROVIDED, HOWEVER, EACH PARTY SHALL BE ENTITLED TO: NO MORE THAN 5 DEPOSITIONS OF NO MORE THAN 5 HOURS EACH PER SIDE, NO MORE THAN 1 WRITTEN SET OF NO MORE THAN THIRTY (30) INTERROGATORIES, AND NO MORE THAN FIFTY (50) REQUESTS FOR PRODUCTION, UNLESS THE MAJORITY OF THE ARBITRATORS GRANT THE PARTIES THE RIGHT TO ADDITIONAL DISCOVERY. THE ARBITRATION PROCEEDINGS AND HEARINGS WILL BE CONDUCTED IN DALLAS, TEXAS OR AT SUCH OTHER PLACE AS MAY BE SELECTED BY MUTUAL AGREEMENT. EACH PARTY SHALL BEAR ITS OWN COSTS AND EXPENSES (INCLUDING ATTORNEY FEES), AS WELL AS AN EQUAL SHARE OF THE ARBITRATORS' FEES AND ADMINISTRATIVE FEES OF ARBITRATION. NO PARTY OR ARBITRATOR(S) MAY DISCLOSE THE EXISTENCE, CONTENT OR RESULTS OF ANY ARBITRATION HEREUNDER WITHOUT THE PRIOR WRITTEN CONSENT OF ALL PARTIES.

12.15 Contract Execution; Counterparts; Original Documents. Each Party agrees that this Agreement, as well as any amendments thereto, may be executed by written or electronic signature and may be delivered by facsimile or other electronic transfer in multiple counterparts, each of which will be as binding on the Party or Parties as an original document. Each Party understands and agrees that such facsimiles or other electronic transmissions shall be deemed to constitute the original of such documents, and that any objections that they do not constitute the "best evidence" of the documents, or that they do not comply with the "Statute of Frauds," as well as any other similar objections to the validity or admissibility of the document, are hereby expressly waived by the Parties.

GOVERNMENTAL ADDENDUM TO THE  
CONTRACT FOR SUPPLY OF ELECTRICITY



- I. The following new definitions are hereby added to Section I of the Terms and Conditions, to be inserted in alphabetical order, as applicable:

"Code" means the following:

For local governmental entities, Texas Local Government Code, Title 8, Chapter 271, Subchapter I, Sections 271.151 through 271.160, and any amendments thereto; and

For state governmental entities, Texas Government Code, Title 10, Chapter 2260, and any amendments thereto.

"Covered Contract" means the following:

For local governmental entities, a "Contract subject to this subchapter," as such phrase is defined in Section 271.151(2) of the Code; and

For state governmental entities, a "Contract," as such phrase is defined in Section 2260.001(1) of the Code.

- II. Section 4.1 of the Terms and Conditions shall be deleted in its entirety and replaced with the following:

Seller will invoice Buyer for the Charges listed in Article II ("Charges") of the Agreement for Power delivered to the Premise(s) during each monthly billing cycle of the Term. Following receipt of such invoice, Buyer shall pay Seller the Charges identified on each invoice on or before the end of the time period listed in Article III ("Billing") of the Agreement. Buyer shall notify Seller in writing on or before the due date if Buyer is withholding payment of any disputed portion of the Charges and shall include a list of specific reasons for the dispute; provided, however, that the undisputed portions of the Charges shall remain due and payable on the due date. If Buyer gives such notice of dispute, the Parties shall pursue diligent, good faith efforts to resolve the dispute during the thirty (30) calendar days following Seller's receipt of the notice. Any amount found payable (including interest) shall be paid within fifteen calendar days of the dispute being resolved. If the Parties are unable to resolve the dispute during the thirty (30) day period and it is subsequently determined that Buyer should pay Seller all or part of the disputed amount, Seller may require that Buyer pay interest on such past due amount from the date such payment was originally due until the same is paid. All past due amounts shall accrue interest at a rate equal to the lesser of (i) one percent (1%) above the "Prime Rate" as published on the first business day of July of Buyer's preceding fiscal year that does not fall on a Saturday or Sunday in the Wall Street Journal under "Money Rates" or an appropriate substitute should such rate cease to be published, or (ii) the highest rate allowed by law, from the date the payment was originally due until paid (including accrued interest).

- III. Section 4.5 of the Terms and Conditions shall be deleted in its entirety and replaced with the following:

4.5 If, upon expiration or termination of the Agreement for any reason, Buyer fails either to switch to another retail electric provider or execute a replacement agreement with Seller, then, until Buyer either executes a replacement agreement with Seller or switches to another provider for the applicable Premise(s), Seller may charge Buyer, as the Contract Price for Power utilized at such Premises after expiration or termination of the Agreement, a price per kWh equivalent to Seller's then current "standard list price offer," and the other terms governing such sales shall be identical to those applicable to sales that occurred prior to the termination/expiration of the Agreement. Provided further, however, in the event that after such termination or expiration Buyer should fail to make payment due to Seller or provide security after notice and opportunity to pay/provide, Seller, in its sole discretion and at whatever time chosen by Seller, may (as a result of PUCT rules that forbid a REP from switching a customer to the POLR) direct the TDSP to disconnect electric service to the Premise(s) under such Agreement, except as may be prohibited by law; however, Seller shall not have the right to direct the TDSP to disconnect electric service for the non-payment of amounts that are subject to a bona fide dispute.

- IV. The following Section 4.7 shall be added to Article IV of the Terms and Conditions:

4.7 If Buyer notifies Seller in writing of a justifiable concern regarding the accuracy of an invoice, Seller will make the records in its possession that are reasonably necessary to verify the accuracy of the bill available to Buyer during normal business hours. It is understood and agreed that such information and records provided under this Section 4.7 constitute Seller's proprietary and confidential information, the release of which could hinder or harm Seller's competitive position; therefore, such information and records are not intended to be subject to disclosure under the Texas Public Information Act (TPIA) and shall not be released by Buyer, unless (a) otherwise determined by the Texas Attorney General or a court of competent jurisdiction; or (b) prior written approval is obtained from Seller. In the event that Buyer receives a request pursuant to the TPIA that encompasses information or records provided by Seller under this Section 4.7, Buyer shall notify Seller of such request within ten (10) days of receipt. Nothing in this section will require Buyer to pursue a legal challenge in any court to seek to overturn a ruling by the Texas Attorney General's Office or a court requiring disclosure pursuant to the provisions of the TPIA or another provision of law, but Buyer shall (i) cooperate and assist Seller if Seller pursues such a challenge and (ii) make no disclosure until, if, and when Seller's challenge is finally denied. All information and records provided hereunder constitute Seller's property and such information, records, and copies thereof, as well as all notes taken therefrom, shall be returned to Seller promptly after the resolution of the concerns regarding the accuracy of the invoice.

- V. The following Section 4.8 shall be added to Article IV of the Terms and Conditions:

4.8 Buyer represents and warrants that as a political subdivision or agency of the State of Texas, it is exempt from state sales taxes pursuant to Section 151.309 of the Texas Tax Code. Seller may request a certificate of exemption from Buyer, and Buyer shall provide such certificate within a reasonable period of time. Thereafter, Seller, to the extent that it is not required to collect or pay such taxes, will not flow through the costs of such taxes hereunder to Buyer.

- VI. Section 6.2(a) of the Terms and Conditions shall be deleted in its entirety and replaced with the following:

6.2(a) If Seller terminates the Agreement due to a Material Breach by Buyer, Buyer shall, within thirty (30) calendar days of receipt of Seller's invoice following such termination, pay Seller, in addition to all reasonable direct costs and expenses incurred by Seller as a result of such Material Breach and termination, and all amounts Buyer owes Seller under the Agreement with respect to time periods prior to the termination, the positive amount, if any, calculated as follows as of the date of termination: the sum of (A) the product of (i) the remaining quantities of electricity for the remainder of the Agreement Term as reflected on Exhibit A-1 (the "Remaining Quantities") multiplied by (ii) the Contract Price under such Agreement minus the then-current market value of a kWh as reasonably determined by Seller plus (B) the value of any term extension option rights, if any, that Seller may have under the Agreement. In addition, if the termination was pursuant to Section 6.1(a) or (h) above due to Buyer's Material Breach in failing to make payment due to Seller or provide security after the requisite notice and opportunity to cure, Seller may (as a result of PUCT rules that forbid a REP from switching a customer to the POLR) direct the TDSP to disconnect electric service to the Premise(s) covered hereunder, except as may be prohibited by law; however, Seller shall not have the right to direct the TDSP to disconnect electric service (i) for the non-payment of amounts that are subject to a bona fide dispute, (ii) prior to termination of the Agreement, or (iii) for a termination of the Agreement due to a Material Breach other than non-payment or failure to provide security.

- VII. The following Sections 6.3 and 6.4 shall be added to Article VI of the Terms and Conditions:

6.3 The Parties agree that if (i) Buyer is unable to allot or appropriate sufficient funds for Buyer's fiscal year(s) that follow the initial fiscal year of the Agreement Term to continue the purchase of the total quantity of electricity covered by the Agreement, and (ii) otherwise has no legally available funds for the purchase of electricity, Buyer may terminate the Agreement at the end of Buyer's then current fiscal year by (a) giving Seller ninety (90) calendar days written notice to Seller and (b) enclosing therewith a sworn statement that the foregoing conditions exist. In this sole event, Buyer shall not be obligated to make contract payments under the Agreement beyond the end of the then current fiscal year. Notwithstanding the foregoing, Buyer covenants and represents to Seller that upon the execution of the Agreement (a) Buyer has budgeted and has available sufficient funds to comply with its obligations under the Agreement for the current fiscal year, (b) there are no circumstances presently affecting Buyer that could reasonably be expected to adversely affect its ability to budget funds for the payment of all sums due under the Agreement, (c) Buyer believes that funds can be obtained in amounts sufficient to make all contract payments during the full Agreement Term and intends to make all required contract payments for the full Agreement Term, (d) Buyer covenants that it will do all things within its power to obtain, maintain and properly request and pursue funds from which contract payments may be made, specifically, including in its annual budget requests amounts sufficient to make contract payments for the full Agreement Term, (e) Buyer will not give priority in the appropriation of funds for the acquisition or use of additional energy services, (f) if any funds are appropriated for electricity costs, such funds shall be applied first to the cost of electricity to be provided pursuant to the Agreement and that any such funds shall not be used to pay for electric power from any other electric power provider for the accounts covered in the Agreement, and (g) Buyer agrees to notify Seller in writing of such non-appropriation at the earliest practicable time subsequent to the failure to appropriate. As of the termination date of the Agreement under this

Section 6.3, Seller shall have no further duty to supply electricity to Buyer under such Agreement and Buyer shall move service for Buyer's Premises to another REP or the POLR on the date of termination for non-appropriation.

6.4 If Buyer uses its inherent powers as a governmental entity under the provisions of Articles VII, X, or in any other manner to circumvent the intent or terms and provisions of the Agreement, Buyer shall be responsible for contract damages caused by such action.

VIII. Section 8.2 of the Terms and Conditions shall be deleted in its entirety and replaced with the following:

**ANY LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER IN TORT OR CONTRACT OR OTHERWISE IN CONNECTION WITH THE AGREEMENT. THE LIMITATIONS IMPOSED ON REMEDIES AND DAMAGE MEASUREMENT WILL BE WITHOUT REGARD TO CAUSE, INCLUDING NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE. ANY PAYMENT TO WHICH SELLER IS ENTITLED UNDER THE AGREEMENT SHALL CONSTITUTE A BALANCE DUE AND OWED UNDER THE AGREEMENT.**

IX. Article X of the Terms and Conditions is hereby amended for local and state governmental entities to add a new Section 10.4 to read in its entirety as follows:

10.4 The Parties hereby acknowledge and agree that this Agreement is a Covered Contract subject to all provisions of the Code (unless preempted by other applicable law), that Buyer is either a local governmental entity or a unit of state government, each as defined in the Code, with the authority to enter into the Agreement, and that the Agreement will be properly approved and executed. By signing and entering into this Contract, Seller verifies that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

X. Article XI of the Terms and Conditions shall be retitled "Responsibility" and Sections 11.1 and 11.2 thereof shall be deleted in their entirety and replaced with the following:

11.1 As between the Parties, Buyer assumes full responsibility for electric energy on Buyer's side (downstream) of the TDSP Point of Delivery, and agrees to the full extent allowed by law, to and shall hold harmless Seller, its parent company and all of its affiliates (except any which may be the TDSP serving Buyer's Premise(s)), and all of their respective officers, directors, shareholders, associates, employees, servants, and agents (collectively referred to as "Seller Group"), from and against all claims, losses, expenses, damages, demands, judgments, causes of action, and suits of any kind (collectively referred to "Claims"), including Claims for personal injury, death, or damages to property, occurring on Buyer's side of the TDSP Point of Delivery, arising out of or related to the electric power and energy and/or Buyer's performance under the Agreement.

11.2 As between the Parties, Seller assumes full responsibility for electric energy on Seller's side (upstream) of the Seller Point of Delivery, and agrees to and shall hold harmless Buyer, its officials, associates, employees, servants, and agents (collectively referred to as "Buyer Group"), from and against all Claims, including Claims for personal injury, death, or damages to property occurring on Seller's side of the Seller Point of Delivery, arising out of or related to the electric power and energy and/or Seller's performance under the Agreement.

XI. The following shall be added to the end of Section 12.4 of the Terms and Conditions:

Except to the extent necessary to enforce Seller's rights under the Agreement and to the extent allowed by law, including but not limited to the Code, nothing in the Agreement shall constitute or be interpreted to constitute a waiver of Buyer's statutory and common-law immunity defenses, including sovereign and/or governmental immunity and qualified and/or official immunity; it being intended that such immunities shall in all respects be preserved except as otherwise provided herein.

XII. Sections 12.6 and 12.7 of the Terms and Conditions shall be deleted in their entirety and replaced with the following:

12.6 **Survival.** No termination or cancellation of the Agreement will relieve either Party of any obligations under the Agreement that by their nature survive such termination or cancellation, including, but not limited to, all warranties, obligations to hold harmless, obligations to pay for electricity taken, and obligations for any breaches of contract.

12.7 **Confidentiality.** Seller acknowledges that Buyer is a governmental body that is subject to the TPIA, which requires Buyer to release upon request any information that is defined as public absent a ruling from the Texas Attorney General's Office. Subject to the TPIA or any other court order, rule or regulation requiring disclosure, Buyer agrees to keep all terms and provisions of the Agreement, and any information and records in Buyer's possession that are provided under the Agreement, confidential and not to disclose the terms of the same to any third parties without the prior written consent of Seller. It is understood and agreed that the foregoing constitutes proprietary and confidential information of Seller, the release of which could hinder or harm Seller's competitive position, and therefore is not intended to be subject to disclosure under the TPIA and shall not be released by Buyer, unless (a) determined otherwise by the Texas Attorney General or a court of competent jurisdiction; or (b) prior written approval is obtained from Seller. In the event that Buyer receives a request pursuant to the TPIA that encompasses the foregoing information, Buyer shall notify Seller of such request within ten (10) days of receipt. Nothing in this section will require Buyer to pursue a legal challenge in any court to seek to overturn a ruling by the Texas Attorney General's Office or a court requiring disclosure pursuant to the provisions of the TPIA or another provision of law, but Buyer shall (i) cooperate and assist Seller if Seller pursues such a challenge and (ii) make no disclosure until, if, and when Seller's challenge has been finally denied.

XIII. The last sentence of Section 12.9 of the Terms and Conditions shall be deleted and replaced with the following:

Buyer hereby further represents and warrants to Seller that (a) Buyer is authorized by statute or the constitution to enter into this Agreement, (b) the Agreement has been properly approved and executed, and (c) Buyer's governing body meets more frequently than once per month and will continue to do so throughout this Agreement Term. If any of Buyer's representations or warranties are untrue when made or fail to be true at all times during the Agreement Term, Buyer shall bear full responsibility for all resulting costs and damages.

XIV. Section 12.14 of the Terms and Conditions shall be deleted in its entirety and replaced with the following:

For state governmental entities: Unless preempted by other applicable law, the dispute resolution process provided for in the Code shall be used by Buyer and Seller to resolve any dispute arising under the Agreement. The dispute resolution process provided for in the Code shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by the Seller under the Agreement. If Seller's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in the Code. To initiate the process, Seller shall submit written notice, as required by subchapter B of the Code, to Buyer in accordance with the notice provisions in the Agreement. Compliance by Seller with the Code is a condition precedent to the filing of a contested case proceeding under the Code.

The contested case process provided in the Code is Seller's sole and exclusive process for seeking a remedy for an alleged breach of the Agreement by Buyer if the Parties are unable to resolve their disputes in the ordinary course of business. Compliance with the contested case process provided in the Code is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of this Agreement by Buyer nor any other conduct of any representative of Buyer relating to the Contract shall be considered a waiver of sovereign immunity to suit.

For local and county governmental entities: **[Intentionally Deleted]**

XV. A new Section 12.16 of the Terms and Conditions is hereby added to read in its entirety as follows:

12.16 **Attorneys' Fees.** In any litigation to enforce the terms of this Agreement, the prevailing party is entitled to recover its reasonable and necessary attorneys' fees from the non-prevailing party.

[End of Addendum]

## Exhibit A – Point of Delivery Listing



Legal Name: CITY OF RIO HONDO

Quote: S0337334

TDSP	ESI ID	ESI ID Address	Congestion Zone	Meter Cycle	Special Start Date	Special End Date	Profile	Meter Type	Standing Charge	ESI Peak KW
AEP TEXAS CENTRAL COMPANY	10032789469444191	501 S REYNOLDS UNIT 2 RIO HONDO TX 78583-3275	South	10			BUSLOLF	AMSM	\$0.00	2
AEP TEXAS CENTRAL COMPANY	10032789481216240	982 STREETLIGHT STLG 130LED RIO HONDO TX 78583	South	10			NMLIGHT		\$0.00	0
AEP TEXAS CENTRAL COMPANY	10032789477817134	947 STREETLIGHT UNIT 250HP RIO HONDO TX 78583	South	10			NMLIGHT		\$0.00	0
AEP TEXAS CENTRAL COMPANY	10032789477817133	946 STREETLIGHT STLG 150HP RIO HONDO TX 78583	South	10			NMLIGHT		\$0.00	0
AEP TEXAS CENTRAL COMPANY	10032789402943211	101 MADERO UNIT CTYSHOP UNIT CTYSH RIO HONDO TX 78583	South	10			BUSLOLF	AMSM	\$0.00	4
AEP TEXAS CENTRAL COMPANY	10032789404016890	101 E COLORADO RIO HONDO TX 78583-3525	South	10			BUSLOLF	AMSM	\$0.00	6
AEP TEXAS CENTRAL COMPANY	10032789413786820	1401 N REYNOLDS RIO HONDO TX 78583-3021	South	10			BUSLOLF	AMSM	\$0.00	0
AEP TEXAS CENTRAL COMPANY	10032789418147911	RIO HONDO LOT TMP LOT TMP RIO HONDO TX 78583	South	10			BUSLOLF	AMSM	\$0.00	0
AEP TEXAS CENTRAL COMPANY	10032789425037910	100 MADERO AVE RIO HONDO TX 78583	South	10			BUSNODEM	AMSR	\$0.00	0
AEP TEXAS CENTRAL COMPANY	10032789438305988	231 ROBERT GARZA JR DR UNIT LFTST UNIT LFTST RIO HONDO TX 78583	South	10			BUSLOLF	AMSM	\$0.00	15
AEP TEXAS CENTRAL COMPANY	10032789446406875	1005 S REYNOLDS UNIT FIELD SPORT COMPLEX UNIT FIELD RIO HONDO TX 78583	South	10			BUSLOLF	AMSM	\$0.00	58
AEP TEXAS CENTRAL COMPANY	10032789450311462	1013 REYNOLDS RIO HONDO TX 78583	South	10			BUSHILF	AMSM	\$0.00	44
AEP TEXAS CENTRAL COMPANY	10032789451708779	401 PARKWAY AVE RIO HONDO TX 78583	South	10			BUSLOLF	AMSR	\$0.00	10
AEP TEXAS CENTRAL COMPANY	10032789455232980	5 RIO HONDO VLG RIO HONDO TX 78583-3021	South	10			BUSLOLF	AMSR	\$0.00	1
AEP TEXAS CENTRAL COMPANY	10032789460907080	121 W ARROYO BLVD RIO HONDO TX 78583-3035	South	10			BUSLOPV	AMSM	\$0.00	94

AEP TEXAS CENTRAL COMPANY	10032789480218615	1401 S REYNOLDS TRLR LABOF RIO HONDO TX 78583-3117	South	10			NMLIGHT	AMSR	\$0.00	10
AEP TEXAS CENTRAL COMPANY	10032789482426220	1099 S REYNOLDS RIO HONDO TX 78583	South	10			BUSLOLF	AMSM	\$0.00	7
AEP TEXAS CENTRAL COMPANY	10032789485562090	1 MADERO RIO HONDO TX 78583	South	10			NMLIGHT	AMSM	\$0.00	6
AEP TEXAS CENTRAL COMPANY	10032789497843460	310 N ROBERTSON BLDG WATER BLDG WATER RIO HONDO TX 78583	South	10			BUSMEDLF	AMSM	\$0.00	48

Total Number of Points of Delivery = 19

Total Peak kW = 305

Total Monthly Standing Charges = \$0.00

**ESI ID ACKNOWLEDGEMENT**

Buyer represents and warrants that each and every ESI ID and Premise listed in this Exhibit A primarily serves Buyer's commercial non-residential purposes, and that all information listed therein (including the Monthly Contract Usage Quantities on Exhibit A-1) is accurate and correct. Buyer agrees to bear all responsibility, liability, and associated costs with regard to (i) the foregoing representation and warranty, as well as (ii) any missing ESI IDs not listed in Exhibit A, and/or ESI IDs erroneously listed on Exhibit A.

In the event this Exhibit A contains temporary placeholder ESI ID numbers (typically denoted by "TPH" at the beginning of the ESI ID number) for contracted future Buyer ESI IDs, then (i) Buyer shall give Seller at least thirty (30) days prior written notice of the date that each such ESI ID will be energized as a Buyer ESI ID (i.e., when Buyer will begin utilizing the applicable facility located at Buyer's Premise), (ii) Seller will not be obligated to serve any such ESI ID under the Agreement until, at the earliest, after the expiration of at least thirty (30) days after Buyer's written notice has been given to Seller, and (iii), in any event, Buyer's giving, or failure to give, timely notice to Seller shall not affect Buyer's obligation, under the Agreement, to be responsible for all volumes contracted for under the Agreement as reflected on Exhibit A-1.

## Exhibit A-1 – Monthly Contract Quantities



Legal Name: CITY OF RIO HONDO

Quote: S0337334

Total Contract kWh: 5,082,000

Period*	Contract Quantities (kWh)
6/1/2024	49,345
7/1/2024	77,748
8/1/2024	75,808
9/1/2024	81,287
10/1/2024	74,381
11/1/2024	64,044
12/1/2024	60,822
1/1/2025	61,475
2/1/2025	58,820
3/1/2025	66,966
4/1/2025	70,895
5/1/2025	78,437
6/1/2025	76,279
7/1/2025	77,748
8/1/2025	75,808
9/1/2025	81,287
10/1/2025	74,381
11/1/2025	64,044
12/1/2025	60,822
1/1/2026	61,475
2/1/2026	58,820
3/1/2026	66,966
4/1/2026	70,895
5/1/2026	78,437
6/1/2026	76,279
7/1/2026	77,748
8/1/2026	75,808
9/1/2026	81,287
10/1/2026	74,381
11/1/2026	64,044
12/1/2026	60,822
1/1/2027	61,475
2/1/2027	58,820
3/1/2027	66,966
4/1/2027	70,895
5/1/2027	78,437
6/1/2027	76,279
7/1/2027	77,748
8/1/2027	75,808
9/1/2027	81,287
10/1/2027	74,381
11/1/2027	64,044

12/1/2027	60,822
1/1/2028	61,475
2/1/2028	58,820
3/1/2028	66,966
4/1/2028	70,895
5/1/2028	78,437
6/1/2028	76,279
7/1/2028	77,748
8/1/2028	75,808
9/1/2028	81,287
10/1/2028	74,381
11/1/2028	64,044
12/1/2028	60,822
1/1/2029	61,475
2/1/2029	58,820
3/1/2029	66,966
4/1/2029	70,895
5/1/2029	78,437
6/1/2029	76,279
7/1/2029	77,748
8/1/2029	75,808
9/1/2029	81,287
10/1/2029	74,381
11/1/2029	64,044
12/1/2029	60,822
1/1/2030	61,475
2/1/2030	58,820
3/1/2030	66,966
4/1/2030	70,895
5/1/2030	78,437
6/1/2030	27,162

Total Number of Periods = 73

\* The first and/or last period(s) may reflect partial month volumes based on beginning and ending meter read cycles



# **Wellness Program 2020**

COMMUNITY-WIDE CAMPAIGN "TU SALUD ¡SI CUENTA!"

# Creating a Culture of Health

BUILDING A VIBRANT, HEALTHY, & ACTIVE COMMUNITY

## RIO HONDO, TEXAS



### Victoria Ann De La Cruz

NEW COMMUNITY HEALTH WORKER

"Hello, my name is Victoria Ann. I work for the City of Rio Hondo as a Community Health Worker. I have two beautiful children and a husband. I love to exercise, cook, and travel in my spare time. I have been a certified Group Fitness Instructor for over 8 years, but I also enjoy teaching aerobic classes. I have lived in the Rio Grande Valley for over 20 years, and I am so glad to call this place my home. I decided to become a Community Health Worker because I want to share my passion and knowledge of health and wellness with others to help make a difference in my community. I am looking forward to helping my community become aware of the importance of their health and wellness."

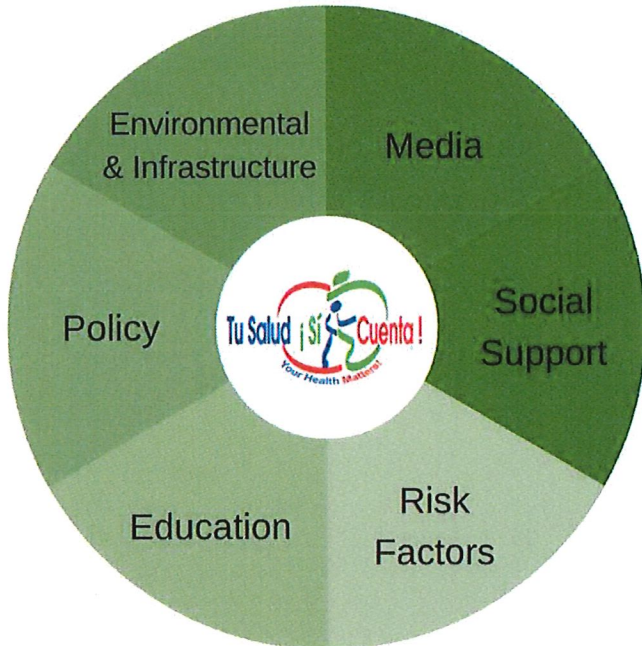


Follow us on:

- @tsscRGV
- tusaludsicuenta
- tusaludsicuenta
- www.tusaludsicuenta.org

# PROGRAM HIGHLIGHTS

## PROGRAM ELEMENTS



Tu Salud ¡Si Cuenta! is evidence-based, collaborative, innovative, and results-driven - focused on improving health outcomes.

Our priorities include:

- Evidence-based prevention & intervention projects
- Policy change
- Environmental change
- Chronic disease prevention & control
- Focus on underserved population

- **26.07%** of participants recovered to normal blood pressure by their last visit.
- Fruit & vegetable consumption increased by **1.06 servings**.
- **21.6%** of participants met the recommended fruit & vegetable guidelines by their last visit.
- **33.3%** of participants met physical activity guidelines by their last visit.
- **8.08%** of participants reduced from obese to overweight or normal weight.
- **15.70%** of participants lost more than 5% of their body weight.

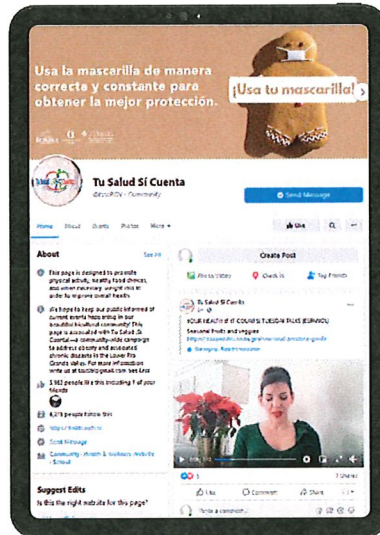
**Participants improved blood pressure, weight, physical activity and fruit and vegetable consumption!**

\*Data analyzed from 2015-2019

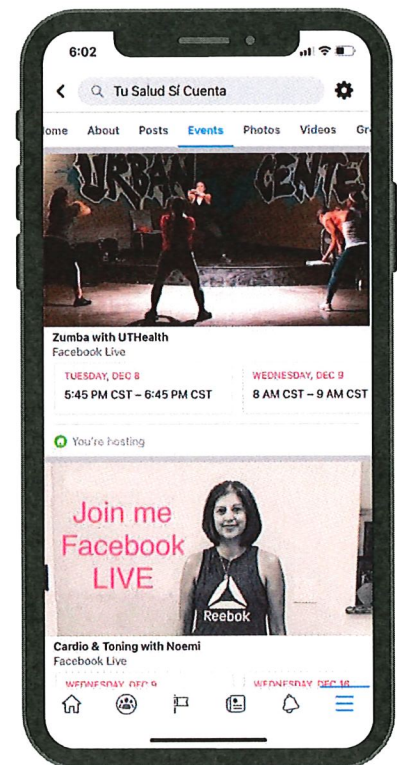
\*Data includes participants not meeting guidelines at baseline.

# REVIEW OF 2020

We moved  
online!



As part of our COVID-19 relief efforts, we moved all programming online! Daily exercise classes, weekly healthy tips and recipes, monthly Tu Salud ¡Si Cuenta! newsletters, & our Tuesday Talks videos can be streamed from the comfort of your home using the Tu Salud ¡Si Cuenta! Facebook page. Check us out!



+52 Television segments  
+199 total class series initiated

+200 Facebook posts  
+185 weekly classes on average

# REVIEW OF 2020

A message from the Tu Salud ¡Si Cuenta! Team:

Given these unprecedented times amid the COVID-19 pandemic, there have been a number of changes in the implementation of the Community-Wide Campaign Tu Salud ¡Si Cuenta! this year. We want to extend our gratitude to our partnering organizations, city leaders, community partners, and community health workers for all of their hard work. We could not have gotten through this year without your help and participation! We hope to see you all soon.

*Thank you!*

## COLLABORATIONS



The Collaborative Action Board (CAB) is dedicated to creating a healthy, prosperous, and resilient RGV Binational Region. The CAB is comprised of many organizations from city departments, state health departments, organizational and community non-profit entities, hospitals, clinics, school districts, and public officials from across the Rio Grande Valley.



In the Texas Lower Rio Grande Valley, the Caracara Trails are a vision for a 428-mile trail network that will link the rich natural, cultural, and historical resources the area is known for. This network creates a unified regional identity for outdoor tourism, promoting healthier lifestyles, and generating a renewed sense of community pride for everyone who lives here.



Unidos Contra la Diabetes (UCD) is a community partnership dedicated to preventing diabetes by building on existing efforts and partnerships, and coming together as a collective unit to magnify the impact on this important challenge for our community. The goal of UCD is to reduce the number of new cases of type II diabetes in 4 years, resulting in a 10% reduction in the prevalence of diabetes by 2030.

# **Wellness Program Agreement**

9

Revised 11/13/2020

## **SERVICES AGREEMENT**

This Services Agreement ("Agreement") is entered into on this 23<sup>rd</sup> day of November 2020, by and between The University of Texas Health Science Center at Houston on behalf of its Department of Brownsville Regional Campus ("University"), an agency of the State of Texas and governed by the Board of Regents of The University of Texas System ("System"), and the City of Rio Hondo ("Contractor").

### RECITALS

WHEREAS, University desires to engage the services of Contractor; and,

WHEREAS, Contractor is competent to provide such services and desires to work with University;

NOW, THEREFORE, University and Contractor agree that the following terms, conditions and limitations shall govern this Agreement:

1. Scope of Work: Contractor will perform the scope of the work to the satisfaction of University as described below:

#### Staff, Equipment, and Training

- Contractor will employ a community health worker (CHW) to carry out the Tu Salud ¡Si Cuenta! (TSSC) program activities in their municipality, which include the promotion of SNAP - Ed (Supplemental Nutrition Education Program- Education). Contractor will oversee the CHW duties. If the CHW is replaced, contractor will ensure that the new CHW, if not already a certified community health worker by the Texas Department of State Health Services, receives the 160-hour course and becomes certified. This should be completed within 4 months of being hired. During that time, the CHW-in-training may conduct CHW duties, but only under the direct supervision of a TSSC certified CHW in order to protect the contractor and participant.
- Contractor is responsible for purchasing and maintaining the following equipment required by the program: a laptop computer, projector, a scale, and a stadiometer. Specifications for these equipment items will be provided by University.
- Contractor will ensure that the CHW has a workspace, including venues to host exercise classes, DPP classes, and The Happy Kitchen/La Cocina Alegre™ classes, in order to implement TSSC program services. All programs must be offered in safe locations and at times convenient to participants.

#### Participation in Program Meetings

- Contractor municipal leadership representatives will participate in a minimum of 2 semiannual meetings or seminars organized by University between November 23, 2020 and September 30, 2021.
- Contractor will ensure CHW participates in monthly training meetings and seminars organized by University. A maximum of 2 excused absences will be allowed during the agreement period. If two excused absences have been used and CHW is unable to attend a monthly meeting, a representative is required to attend in place of the CHW.

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- Contractor and University will meet as needed to discuss progress in meeting the services listed in this agreement.

#### Coalition

- Contractor will ensure participation in an established local community coalition; if one does not exist, the Contractor will create a local community coalition. The purpose of this coalition is to help give contractor insight into additional strategies for creating a healthy community by involving community members to provide feedback and concerns. Contractor and community actions or improvements related to items discussed during the meetings should be documented.
  - Contractor municipal leadership representative must attend or host a minimum of 4 coalition meetings by September 30, 2021. Contractor municipal leadership representative will be expected to contribute towards resolving issues identified in the coalition meetings. CHW can provide support with all coalition efforts.
  - Contractor must submit agendas, sign-in sheets, and minutes to document contractor's attendance and participation in coalition meetings. Documentation must be submitted to University within 15 business days after coalition meeting was held.
  - Contractor will work with the following partners in an effort to avoid the duplication of efforts: UTHealth, the Lower Rio Grande Valley Area Health Education Center (AHEC), the UTRGV School of Medicine Unimovil (mobile health clinic), the UTRGV Office of Community Engagement & Economic Development, Brownsville Wellness Coalition, and Texas A&M affiliates. Contractor will communicate regularly with the aforementioned partners to facilitate communication and provide any timely updates.

#### Program Implementation

Contractor will implement all TSSC components during the contract period, which are comprised of: mass media, social support, risk factor screening, education, and infrastructure change supporting health outcomes. The following program services pertaining to the TSSC components should be implemented during the agreement period:

- Risk Factor Screening and Follow-up
  - Contractor will ensure that at least 265 individuals with risk factors for chronic disease are enrolled in the TSSC program between November 23, 2020 and September 30, 2021. Contractor will follow all TSSC components with enrolled participants and document participant changes as prescribed by University.
    - 25% of 265 may be reactivated from previous years and must have a minimum of 2 follow up visits in which TSSC content modules are delivered.
    - The University is setting up a new referral process to support individuals who are at risk for chronic disease and living in the respective municipality to more quickly access lifestyle change support from the trained CHW. Contractor will work with the University to accept these referrals and deploy their CHW to support health improvements.
  - Contractor will work with University representatives to improve the percentage of participants who meet physical activity recommendations (per HHSC specifications) as part of the TSSC program. A minimum of 45% of TSSC participants who receive a follow up must report increased physical activity. Follow up must be conducted by September 30, 2021.



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- Contractor will work with University representatives to improve the percentage of participants who meet fruit and vegetable consumption recommendations (per HHSC specifications) as part of the TSSC program. A minimum of 35% of TSSC participants who receive a follow up must report increased fruit and vegetable consumption and/or increased intention to eat fruits and vegetables. Follow up must be conducted by September 30, 2021.
- 75% of newly enrolled participants will be required to receive a minimum of 4 follow up visits in which TSSC educational modules are shared. In order to accomplish this all participants will need to be enrolled in the first two quarters of the contract year to allow adequate time for follow up.
- Mass Media
  - Contractor will ensure CHW utilizes the monthly TSSC newsletter provided by University as part of enrollment and follow-up visit procedures. The newsletters should be provided to enrolled participants and relevant sections should be discussed with participants (e.g. role model, recipe, tips, upcoming events).
  - Contractor and CHW will identify TSSC participants for University to highlight as role models in media efforts (newsletter, weekly television segment, social media, TSSC website, etc.).
  - Contractor will ensure CHW submits an accurate exercise class schedule to University on a monthly basis to be posted on various University-run platforms.
- Social Support
  - Contractor will secure a minimum of 3 venues for group exercise offerings starting November 23, 2020 and maintain group exercise offerings at 3 venues until September 30, 2021.
  - Contractor will ensure that a minimum of 12 free exercise classes per week are implemented by November 23, 2020. Contractor will maintain the availability of 12 classes per week until September 30, 2021. The free exercise classes must be those taught by or coordinated by the CHW. All exercise classes should include nutritional information according to directions outlined by University and in accordance with SNAP-Ed funding. The class types and locations will be coordinated with University to ensure that maximum geographical coverage is achieved across all cities partnering on this project and maximum opportunity for promotion of the classes. Any changes to the exercise and nutrition class schedule, including additions and cancellations, must be approved by University.
  - Contractor will actively promote and participate in The Challenge 2021 activities including the initial weigh-in events (January), midpoint weigh-in events (March) and weigh-out events (April). Participation includes ensuring that the CHW attends at least one event or provides measurement tools and data entry supplies for University to utilize at these events. If The Challenge 2021 is moved to a virtual event only participation will be expected virtually.
- Education
  - Contractor will implement one The Happy Kitchen/La Cocina Alegre™ session (6 classes) in collaboration with University and Brownsville Wellness Coalition. CHW will be responsible for assisting with recruitment, preparation, and facilitation of classes.
  - Contractor will participate in planning for region-wide options for implementation of Diabetes Prevention Program (DPP) Classes using an approved CDC curriculum, typically the Group Lifestyle Balance™ (GLB) curriculum or Prevent T2.

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- Contractor will ensure CHW is certified in the approved DPP curriculum, to be determined by University.
  - If University requests DPP class initiation, contractor will invoice \$5,664 (as part of value of agreement not to exceed \$60,000). This class would need to be initiated by certified CHW employed by contractor and certified as a DPP coach.
    - If a DPP class is initiated, the University will provide a pre-assigned PO number specific to DPP class.
    - If a DPP class is not initiated, total amount of the contract value is \$54,336.
  - The certified DPP coach is required to shadow at least 3 DPP class sessions prior to launching their own or assisting with a DPP program.
  - Metrics must adhere to external DPP grant, as stipulated by the evaluation staff.
  - Contractor will track specific metrics such as physical activity, fruit and vegetable consumption, weight, and waist circumference using standardized forms and procedures delineated by University.
  - The contractor must agree and the CHW must participate in observations of the delivery of course content for monitoring purposes.
  - Data gathered through the program must be de-identified and shared with University for monitoring and reporting purposes at least quarterly.
- Infrastructure Change
    - Contractor will participate in CaraCara Trails meetings coordinated by University and/or partners, typically the Rails-to-Trails Conservancy.

#### Tracking Participant Data and Program Information

- Contractor will work with University to ensure the CHW is trained to use the My Own Med database system.
- Contractor will ensure that the CHW enters all required data into the My Own Med data system on a weekly basis, including:
  - Information about participants enrolled in the TSSC program.
  - Information about participant's insurance status and financial income.
  - Information on the participants who received the follow-up visit (including, but not limited to, physical activity levels, level of consumption of fruits and vegetables, other referrals, and personal goals).
- Contractor will ensure the My Own Med data system containing their municipality's participant data is accurate. Any information that is found to be inaccurate will not count toward the aforementioned goal of reaching 265 new participants.
  - Information collected as part of this project should be maintained in accordance with The HIPAA Privacy Rule. This rule mandates that federal protections are in place for personal health information held by covered entities and gives patients an array of rights with respect to that information. As such, any personal health information collected as part of the TSSC program should not be stored on personal computers or devices and should not be shared via email or cloud services. Any paper files containing personal health information need to be stored in a locked cabinet or drawer.

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Other information may be required in order to track implementation and improvement of the project. The contractor will receive written notice of any new and additional information required for data entry.

- Contractor will ensure CHW submits all exercise class attendance sheets every Monday before 3pm to the assigned University staff member. Attendance sheets must be clear and organized according to University standards.
- Contractor will ensure CHW submits any and all changes to the exercise class schedule by the 15<sup>th</sup> day of every month to the assigned University staff member.
- Contractor will submit the Project Status Form to University on a monthly basis to document progress towards metrics.
- Contractor will participate in UTHealth's evaluation of municipal activities related to the TSSC program. Evaluation activities include but are not limited to: implementation audits and key informant interviews, evaluation of exercise classes, monitoring and observation of classes and screening, and follow-up visit outcomes.
- Contractor will submit documentation of all other TSSC-related items including, but not limited to, partnerships with local businesses and organizations, newspaper articles, etc.

Any expenses not listed in the Scope of Work above, but relating to the TSSC program, must be submitted in writing to the TSSC Program Manager for prior approval.

Time is of the essence in connection with this Agreement. University will have no obligation to accept late performance or waive timely performance by Contractor.

2. Duration of Agreement: This Agreement shall be effective 11/23/2020 and shall terminate on 09/30/2021.
3. Compensation: University shall compensate Contractor as tasks are completed to the satisfaction of University's authorized representative Dr. Belinda Reininger.

All invoices are paid 'Net 30 Days' from receipt of invoice.

**Contractor must demonstrate fulfillment of these services to receive payment.**

**The total value of this Agreement shall not exceed \$60,000.00.**

4. Independent Contractor: It is understood and expressly agreed upon by the parties that Contractor is acting as an independent contractor in performing the services hereunder. Neither Contractor nor its employees shall hold themselves out as employees or agents of University. Neither Contractor nor its employees shall make any statements, representations, or commitments of any kind, or to take any action which shall be binding upon the University, except as may be expressly provided for herein or authorized in writing. University shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, nor provide any other contributions or benefits that might be expected in an employer-employee relationship.
5. Assignment: This Agreement is entered into in reliance upon and in consideration of the singular skill and qualifications of Contractor. Contractor shall therefore not voluntarily or

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by operation of law assign or otherwise transfer its rights or obligations pursuant to the terms of this Agreement to any party without the prior written consent of University. Any attempted assignment or transfer by Contractor of its rights or obligations without such consent shall be void. Furthermore, Contractor shall not subcontract any of the services to be provided hereunder to another entity without the prior written consent of University.

6. Amendment: This Agreement may not be changed or modified in any respect except by means of a written document executed by both parties.
7. Ownership and Use of Work Material.
  - 7.1 All drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any subcontractors in connection with the Work (collectively, "**Work Material**"), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re-use at any time without further compensation and without any restrictions.
  - 7.2 Contractor grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to the Work Material and will cooperate fully with University in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to the Work Material.
  - 7.3 Contractor will deliver all Work Material to University upon expiration or termination of this Agreement. University will have the right to use the Work Material for the completion of the Work or otherwise. University may, at all times, retain the originals of the Work Material. The Work Material will not to be used by any person other than University on other projects unless expressly authorized by University in writing.
  - 7.4 The Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.
  - 7.5 All title and interest in the Work Material will vest in University and will be deemed to be a work made for hire and made in the course of the Work rendered under this Agreement. To the extent that title to any Work Material may not, by operation of law, vest in University or Work Material may not be considered works made for hire, Contractor hereby irrevocably assigns, conveys and transfers to University and its successors, licensees and assigns, all rights, title and interest worldwide in and to the Work Material and all proprietary rights therein, including all copyrights, trademarks, service marks, patents, trade secrets, moral rights, all contract and licensing rights and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In the event Contractor has any rights in the Work Material which cannot be assigned, Contractor agrees to waive enforcement worldwide of the rights against University, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to University with the right to sublicense. These rights are assignable by University.

Revised 11/13/2020

8. Provisions of Law: This Agreement is subject to and shall be governed by the laws of the State of Texas, without regard to its choice of law provisions. Venue for any dispute arising out of this Agreement shall lie exclusively in Harris County, Texas. Any earnings derived from services rendered by Contractor are subject to income taxes; such earnings shall be reported to the government at the end of each calendar year by the University's accounting department. It is understood that Contractor is responsible for paying all applicable federal or state taxes on the compensation paid to Contractor by University.

9. Notices: Notices, correspondence, billings, payments, and all other communications shall be addressed as follows:

To University:

The University of Texas  
Health Science Center at Houston  
P.O. Box 20036  
Houston, Texas 77225

To Contractor:

City of Rio Hondo  
121 N. Arroyo Blvd.  
Rio Hondo, Texas 78583

10. Indemnification: Contractor shall indemnify and hold harmless University, The University of Texas System, its regents, officers, agents and employees from any liability or loss resulting from claims, demands, or injury, including death, that they may suffer as a result of the performance of this Agreement.

11. Responsibility for Individuals Performing Work; Criminal Background Checks: Each individual who is assigned to perform the Work under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the Work under this Agreement. Prior to commencing the Work, Contractor will have an appropriate criminal background screening performed on all the individuals. Contractor will determine on a case-by-case basis whether each individual assigned to perform the Work is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University's campus who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses.

By signing this Agreement, Contractor certifies compliance with this Section. Contractor shall notify University when there is a change in the individuals assigned to perform the Work due to unsatisfactory background check results.

12. Compliance: Contractor certifies:

- that it and its employees comply with all federal and state laws and regulations, including without limitation, Medicare and Medicaid regulations and the Immigration Reform and Control Act of 1986; and
- That neither it nor its employee have been or are presently excluded from participating in, or have been sanctioned by, any federal or state healthcare program; and
- That it has conducted criminal background checks for prior convictions on its employees performing services hereunder.

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Contractor agrees to immediately report to University if it becomes aware of the following: (1) A violation of any federal or state healthcare law, regulation or policy by Contractor, its employees or agents; (2) an inquiry or investigation by the government of Contractor, its employees or agents; or (3) if Contractor or its employees or agents are excluded from, or otherwise sanctioned by, any federal or state healthcare plan.

13. Dispute Resolution: To the extent that Chapter 2260 of the *Texas Government Code*, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor:
- (A) Contractor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by subchapter B of Chapter 2260, to University in accordance with the notice provisions in this Agreement. Contractor's notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific Agreement provision that University allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with subchapter B of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under subchapter C of Chapter 2260. The Executive Vice President for Administration and Business Affairs of University, or such other officer of University as may be designated from time to time by University by written notice thereof to Contractor in accordance with the notice provisions in this Agreement, shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims.
  - (B) If the parties are unable to resolve their disputes under subparagraph (A) of this section, the contested case process provided in subchapter C of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by University.
  - (C) Compliance with the contested case process provided in subchapter C of Chapter 2260 is required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit and (ii) University has not waived its right to seek redress in the courts.
    - (1) The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

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- (2) Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, in whole or in part. University and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived, delayed, or suspended by Chapter 2260 or this section.
14. Termination: University may, without cause, terminate this Agreement at any time upon giving seven (7) days' advance written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for the Work satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to University. Notwithstanding any provision in this Agreement to the contrary, University will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.
15. Loss of Funding: University performance of its duties and obligations under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board") and/or other non-state Granting Authority ("Authority"). If the Legislature fails to appropriate or allot the necessary funds, or the Board or the Authority fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
16. Force Majeure: Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("Force Majeure Occurrence"). Provided, however, in the event of a Force Majeure Occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that University may continue to provide services during the occurrence.
17. Confidentiality: All information owned, possessed or used by University that is communicated to, learned, developed or otherwise acquired by Contractor in the performance of services for University, that is not generally known to the public, will be confidential and Contractor will not, beginning on the date of first association or communication between University and Contractor and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Contractor's own benefit or the benefit of another, any confidential information, unless required by law. Contractor will not make any press releases, public statements, or advertisement regarding this Agreement or to the services to be provided hereunder without the prior written approval of University. To the extent Contractor is permitted to subcontract services it shall ensure that the subcontractor complies with the provisions of this Agreement. Contractor shall employ encryption to mitigate the risk of disclosure of University information in-storage and in-transit. Encryption implementation and strength

Revised 11/13/2020

should be sufficient to protect University information from disclosure until such time as disclosure poses no material risk.

18. Limitation of Liability: Except for University's obligation (if any) to pay Contractor certain fees and expenses University will have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any duty or obligation of University to Contractor or to anyone claiming through or under Contractor, no present or future affiliated enterprise, subcontractor, agent, officer, director, employee, representative, attorney or regent of University, or System, or anyone claiming under University has or will have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.
19. Representations and Warranties by Contractor: If Contractor is a corporation or a limited liability company, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
20. Franchise Tax Certification: If Contractor is a corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that it is exempt from the payment of such taxes, or that it is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.
21. Eligibility Certification: Pursuant to Section 2155.004, Texas Government Code, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
22. Payment of Debt or Delinquency to the State: Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
23. Texas Family Code Child Support Certification: Pursuant to Section 231.006, Texas Family Code, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
24. **Access by Individuals with Disabilities.** Contractor represents and warrants (the "EIR Accessibility Warranty") that the electronic and information resources and all associated information, documentation, and support that it provides to University under the Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in



Revised 11/13/2020

Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, Rule §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*.) To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Contractor fails or is unable to do so, then University may terminate the Agreement and Contractor will refund to University all amounts University has paid under the Agreement within thirty (30) days after the termination date.

25. Work Laws: Contractor shall comply with all labor and employment laws and regulations applicable to Contractor and its employees who will be performing services under this Agreement, including all laws and regulations pertaining to immigration, work status and eligibility (collectively, "Work Laws"). Contractor certifies that Contractor and Contractor's employees who will be performing services under this Agreement are, as of the effective date hereof, lawfully eligible to do so under applicable Work Laws.
26. Export Controls: Contractor shall comply with all applicable laws and regulations pertaining to export controls and the export of controlled technology or data in connection with its activities pursuant to this Agreement, including the Export Control Administration Regulations ("EAR") and the International Traffic in Arms Regulations ("ITAR"). For purposes of this Agreement, "controlled technology or data" means items, commodities, technology, software or information requiring federal agency approval under U.S. government laws and regulations before being exported to restricted foreign countries, persons and/or entities. The EAR and ITAR require U.S. Government approval before University releases controlled technology or data to foreign persons in the United States. In accordance with the foregoing, the following shall apply:
  - (A) Contractor shall promptly notify University in the event that Contractor or any of Contractor's employees who will be performing services under this Agreement or have access to University technology or data is a foreign national or is otherwise restricted under U.S. export controls laws from receiving controlled technology or data.
  - (B) If a license is required from any U.S. government agency to release any technology or data to the Contractor or any Contractor employee in connection with the Agreement, University may, at its discretion: (1) restrict Contractor's access to such technology and/or data until a license or other authorization is obtained, (2) narrow the scope of the services to be provided by Contractor under this Agreement, or (3) terminate this Agreement upon notice to Contractor.
  - (C) In the event that University exercises option (1) or (2) above, the term of the Agreement and scope of work may be adjusted as necessary.
  - (D) In the event that University exercises option (1) above, Contractor shall, promptly upon receipt of an invoice from University therefor, reimburse University's costs for obtaining a license or other authorization.

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(E) In no event shall University be liable to Contractor or any of Contractor's employees for exercising any of its rights set forth in this section 23, except for any lawfully permissible payment for services rendered by Contractor in accordance with the terms of this Agreement.

27. Health Insurance Portability and Accountability Act: Notwithstanding anything to the contrary in this Agreement, if applicable to the Scope of Work to be provided by Contractor hereunder, Contractor agrees to treat all individually identifiable health information in accordance with all applicable laws governing the confidentiality and privacy of individually identifiable health information, including without limitation, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any regulation and official guidelines promulgated thereunder.

28. Integration: This Agreement supersedes any and all other discussions, negotiations, and representations of any kind and represents the entire agreement of the parties hereinabove mentioned.

THIS AGREEMENT WILL BE IN EFFECT UPON FULL EXECUTION BY BOTH PARTIES. UNIVERSITY WILL NOT BE RESPONSIBLE FOR ANY PAYMENTS FOR SERVICES PERFORMED OR PRODUCTS DELIVERED BY CONTRACTOR PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT.

In Witness Whereof, the parties have caused this Agreement to be executed as of the date first set forth above.

CITY OF RIO HONDO

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON

By: \_\_\_\_\_  
Signature

By: *Cheronne Thornton*  
\_\_\_\_\_  
Signature (Authorized Purchasing Agent)

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Title

Buyer II  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

12/14/2020 | 7:12:01 PM PST  
\_\_\_\_\_  
Date

1014651  
\_\_\_\_\_  
PO Number

# **Emergency Services Agreement**

10



THE STATE OF TEXAS §  
 §  
 COUNTY OF CAMERON §

**CAMERON COUNTY EMERGENCY SERVICES DISTRICT NO. 1  
 FIRE SERVICES AGREEMENT**

This Agreement is made and entered into pursuant to Chapter 775 of the Texas Health & Safety Code, by and between the Cameron County Emergency Services District No. 1, hereinafter referred to as "DISTRICT," acting by and through its undersigned President, and the City of Rio Hondo, located in Cameron County, Texas, hereinafter referred to as "PROVIDER," acting by and through its undersigned Mayor. Chapter 775 of the Texas Health & Safety Code shall be followed by all parties.

In consideration of the mutual covenants, agreements, and benefits to both parties, it is AGREED as follows:

**I.  
 PROVISION OF SERVICES**

During the term of this Agreement, PROVIDER agrees to furnish "firefighting" services - defined as the use of personnel and equipment to fight, extinguish and suppress fires, including the handling of "hazardous material incidents" or the provision of "rescue services" to the unincorporated area of Cameron County designated as Zone Number 4 on the Official Fire Protection Service Zone Map of the DISTRICT, which is attached hereto as Attachment "A" and incorporated by reference herein as if fully copied and set forth at length.

While the purpose of this map is to define generally the PROVIDER's main area of responsibility, such a designation does not limit the PROVIDER's duty to respond to other areas within the DISTRICT should the need arise; therefore, it is expressly agreed that when, in the judgment of the PROVIDER's Fire Chief, an emergency demands the response of the PROVIDER's firefighting services outside of Zone Number 4, the PROVIDER shall be obligated to respond.

PROVIDER will conduct itself in conformity with the requirements and standards of emergency services (i.e., firefighting) provided in this State, in accordance with any applicable state standards. PROVIDER will perform all acts necessary to successfully fulfill the purpose of this Agreement and shall, at all times, faithfully, industriously and to the best of its abilities,

experience and talents, perform all the duties that may be required of and from it pursuant to the express and implicit terms of this Agreement and to the reasonable satisfaction of the DISTRICT.

The DISTRICT reserves the right to have its consultant or any other authorized agent or employee contact the PROVIDER and inspect the PROVIDER's facilities, equipment, and personnel to confirm compliance with the terms of this Agreement.

## **II. INDEPENDENT CONTRACTOR**

PROVIDER, as it pertains to this Agreement, is acting as an independent contractor, not an agency or an arm of the DISTRICT. The PROVIDER controls the method and details of the task, pursuant to above, and answers to the DISTRICT only as to the results. PROVIDER's employees are neither employed by the DISTRICT nor paid with DISTRICT funds.

## **III. MUTUAL AID**

It is specifically understood and agreed that the PROVIDER will provide mutual aid, if feasible and without compromising its duties to its assigned Zone, to other Zones in the unincorporated areas of the County, when requested by another PROVIDER. Any dispatch of firefighting or rescue, and personnel pursuant to this Agreement is subject to the foregoing conditions:

1. PROVIDER shall include in its quarterly report a statement detailing the amount and type of equipment used, the number of personnel that responded to the call, and the location to which the equipment and personnel were dispatched to;

2. The responding PROVIDER shall be released as soon as feasible by the requesting agency when the services of the responding PROVIDER are no longer required; and

3. The PROVIDER shall have a statement in their policy manual [SOG's] to indicate a standing order to all members of the PROVIDER, ordering them to take appropriate action, consistent with the exposure to loss, until such time as dispatch is accomplished. For example, a PROVIDER discovers a fire and takes immediate action and is injured. (This particular clause is a requirement for the Federal Public Safety Officers Benefit Program, and must be in written SOG's to qualify for the program).

## **IV. COMPENSATION**

DISTRICT agrees to pay, subject to the availability of funds, the sum of 97,930.84 to the PROVIDER for firefighting services in the said unincorporated area of Zone 4 and for any mutual assistance provided in the unincorporated areas of any other Zones. Such sum to be paid

to the PROVIDER in quarterly payments. If during the term of this Agreement funds become unavailable, DISTRICT will notify PROVIDER in writing after the next Emergency Services District No. 1 Board Meeting that PROVIDER will be excused from any further duties or obligations arising out of this Agreement. DISTRICT will hold harmless PROVIDER for any claims arising subsequent to said unavailability of funds.

It is specifically understood and agreed that as a condition precedent to payment, the PROVIDER shall provide to the DISTRICT a written report summarizing the services rendered to the DISTRICT during the term of this Agreement, with all such reports (for each "fire call") describing the particular incident, in accordance with a standardized Fire Call Reporting Form, a copy of which is attached to this Contract. All such reports shall be due no later than the fifteenth (15th) day of the month following the end of each quarter.

PROVIDER shall not, in any event, be required to provide to the DISTRICT, or include in any such report, any privileged, confidential or private information regarding any patient or person for whom ambulance or emergency medical services have been provided, including but not limited to name, address, medical condition, or treatment information, or any other information determined by PROVIDER to be protected from disclosure under any applicable federal or state law or regulation.

#### **V.**

#### **TERM OF AGREEMENT/TERMINATION**

The term of the Agreement shall be for the following term – November 30, 2020, or at time of signature, through September 30, 2021. This Agreement may be terminated at will by either party sixty (60) days after the other party is sent written notice from the party desiring termination. In the event that a new agreement is not reached prior to the end of this Agreement, this Agreement will continue until either terminated as prescribed or superseded by a new agreement.

#### **VII.**

#### **ACT OF GOD EXCUSES PERFORMANCE**

In the event that either party shall be prevented from completing performance of their respective obligations hereunder by an "act of God" or any other occurrence whatsoever which is beyond the control of the parties hereto, then such party shall be excused from any further performance of its obligations and undertakings hereunder, but only for the period of time after such occurrence that is necessary.

#### **VIII.**

#### **LIABILITY**

If a cause of action occurs due to a PROVIDER's or their employees' activities or acts, the DISTRICT will not legally defend the PROVIDER/employees, pay any legal fees, or pay any settlement costs.

**IX.  
WARRANTIES OR REPRESENTATIONS**

THE PARTIES TO THIS AGREEMENT SPECIFICALLY ACKNOWLEDGE THAT NO WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER IS BEING MADE BY EITHER PARTY IN CONNECTION WITH THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT, except as is set forth in this Agreement.

**X.  
NOTICE**

All notices to the DISTRICT shall be sent by certified or registered mail, addressed to: Cameron County Emergency Services District No. 1, 964 East Harrison Street, Brownsville, Texas 78520, or at such other address as the DISTRICT may otherwise designate. All notices to City of Rio Hondo shall be sent certified or registered mail, addressed to: P.O. Box 389, Rio Hondo, Texas 78583.

**XI.  
LAW GOVERNING/VENUE**

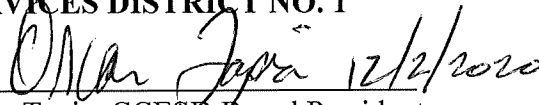
This Agreement shall be governed by the laws of The State of Texas and shall be performable in Cameron County, Texas.

**XII.  
ENTIRE AGREEMENT**

This Agreement shall comprise the entire agreement between the parties hereto and any amendment shall be enforceable only after being reduced to writing, executed by the parties hereto and attached hereto.

Executed in duplicate by the President of the Cameron County Emergency Services District No. 1 and the Mayor of the City of Rio Hondo, who are duly authorized to represent and bind said DISTRICT and PROVIDER, respectively, to the terms and conditions of this Contract, as set forth above, on this 30 day of November, 2020.

**CAMERON COUNTY EMERGENCY  
SERVICES DISTRICT NO. 1**

  
\_\_\_\_\_  
Oscar Tapia, CCESD Board President

**CITY OF RIO HONDO, TEXAS**

\_\_\_\_\_  
Gustavo "Gus" Olivares, Mayor

ATTESTED BY:

\_\_\_\_\_  
Belinda Aguilar, CCESD

ATTESTED BY:

\_\_\_\_\_  
Sylvia Garcia, City Secretary

## Exhibit A

(To CCESD Firefighter Contracts)

The following items or categories, pursuant to the preceding CCESD- PROVIDER Contract (for "firefighting services"), are considered to be a "covered" and compensable "fire call" that is to be undertaken, as appropriate (based on the zone of coverage at issue and within the discretion of PROVIDER), by PROVIDER, which shall parallel the Fire Department Call Report that, along with this Appendix and the foregoing Contract, is approved by CCESD:

### A FIRES

1. Structure Fire
2. Grass Fire
3. Vehicle Fire
4. Utility Pole Fire
5. Tree Fire
6. Trash Fire
7. Brush Fire

### B. RESCUES

1. Aircraft Crash/Down
2. Drowning
3. Bee attack (rescue only)
4. Water Rescue (flood or beach) multiple rescues within the same 12hr operational period will be paid as one call
5. Heavy Rescue (building collapse, farm or industrial equipment)
6. Motor Vehicle Accident Extrication/Scene Safety

### C. ENVIRONMENTAL RESPONSES

1. Motor Vehicle Accident "Spill Clean-up"
2. Gas leak/odor
3. Power lines down
4. **Haz-Mat** Response
5. Removal of trees on roadway

### D. MISCELLANEOUS

1. Automatic Alarm Response
  - In the event of any questions about the terms in this Appendix, the County Fire Marshal will attempt to "rule" on the propriety of the claimed "fire call," administratively, in accordance with the terms of this Appendix and the Contract (between CCESD and PROVIDER), in consultation with the CCESD Administrator and the CCESD Counsel, it being anticipated that only emergency situations are to be addressed under the said Contract and this Appendix, involving (for example) injury to people or property, loss of life or property, or disasters, accidents, storms, explosions and so forth.

First Responders must be certified in the State of Texas as a First Responder through DHS; First Responders must respond "within the County", and they must carry the proper insurance: one million dollars in occurrences and three million dollars in aggregate. Failure to follow these requirements will result in providers not receiving the First Responder stipend.



**Exhibit B**  
**CAMERON COUNTY EMERGENCY SERVICES DISTRICT NO. 1**  
**CCESD FIRE CALL REPORTING FORM** (Effective October 1, 2009, revised 3/14/17)

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Fire Department Name: \_\_\_\_\_

CCESD Fire Zone Assigned (By Contract) To That Fire Department: \_\_\_\_\_

Type of Call (in accordance with the Appendix to the respective CCESD Firefighting Contract, a copy of the Appendix being attached to this Form):

Category: Fires/Rescues/Environmental Responses/Miscellaneous, Mutual Aid Request (Circle one)

Number (e.g., B 6, A 2): \_\_\_\_\_

**MUTUAL AID REQUESTED BY:** \_\_\_\_\_ **REQUESTING AGENCY'S ID#:** \_\_\_\_\_

**MUTUAL AID REQUESTED FROM:** \_\_\_\_\_ **REQUESTING AGENCY'S ID#:** \_\_\_\_\_

Location of Fire/Rescue/Environmental Response/Etc. (Giving Street or similar address and CCESD Fire Zone#):

\_\_\_\_\_  
\_\_\_\_\_

Nature of Incident: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Number of Apparatus/Trucks Responding (of the said Fire Department): \_\_\_\_\_

Number of Personnel Responding (of the said Fire Department): \_\_\_\_\_

Amount of Time on the Scene (of said Fire Department) \_\_\_\_\_

Call Description/Narrative: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Notification of Incident By (e.g., 9-1-1 or municipal dispatcher, sheriff, police, state law enforcement, federal law enforcement, EMS service, or other sources):

I hereby certify, under penalties of perjury, that (1) the information set forth in this Form is true and correct, to the best of my knowledge and belief, in all particulars, (2) this form is accompanied by the Department's standard and legally required "fire incident" report, (3) CCESD is entitled to audit and review this report (as required by CCESD), and (4) the above (i.e., claimed) fire call was within the appropriate CCESD Fire Zone for this Fire Department (which is the appropriate Fire Department to respond to that fire call).

Fire Chief Signature: \_\_\_\_\_ (Printed Name): \_\_\_\_\_ Dated: \_\_\_\_\_

Approved  Denied  Reason for denial follows) \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

(This Fire Call Reporting Form is confirmed and augmented by the "fire incident" report required by law that is to be submitted with this Form). (If more space is required, use additional sheets of paper and attach the same to this Form).

**“Exhibit C”**  
**Performance Statement**

Service Provider shall, in connection with firefighting, and if applicable, emergency medical services within the Cameron County Emergency Services District No. 1:

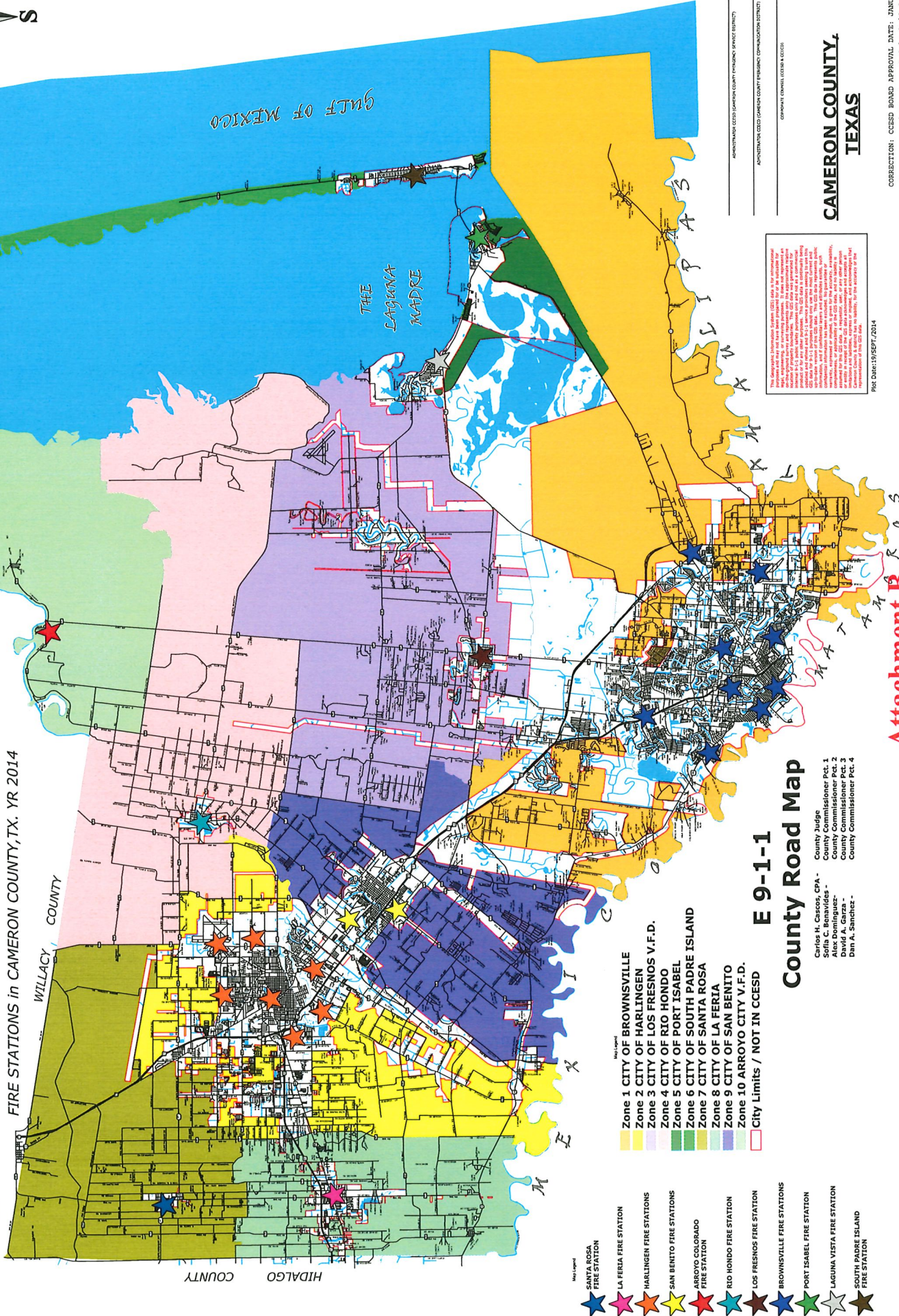
1. Assure fire prevention, firefighting and medical assistance personnel are properly trained and qualified for the levels of service required herein.
2. Assure that adequate qualified personnel are available in order to respond to fire and medical assist calls.
3. Assure that the fire and/or EMS department has adequate liability insurance as required by the State and provide a copy of same.
4. Provide adequate fully equipped and operational firefighting vehicles and equipment to respond to each fire call with a minimum response time.
5. Provide a departmental fiscal year operating budget that shows financial responsibility so as to adequately fund the personnel and equipment needs of the fire and/ or EMS department.
6. Prepare and submit such financial, administrative and narrative reports and other information as required, including but not limited to: A monthly narrative report of fire call activities, as of each month.
7. Provide routine (minor) maintenance of facilities, buildings and grounds, within their capabilities and to keep buildings and grounds clean and neat at all times.
8. Provide a sufficient number of volunteer and/ or paid firefighters to adequately provide fire protection to the District; the firefighters shall be trained in accordance with the minimum standards of the State Fireman’s and Fire Marshal’s Association of Texas, or the Texas Commission on Fire Protection.
9. Establish criteria and conduct a background check to preclude persons who have criminal histories that may be detrimental to the mission of the Department;
10. Maintain written standard operating procedures for the operation of the Department;
11. Maintain job descriptions outlining the responsibilities of members and employees;
12. Comply with the National Fire Protection Association Standards, insofar as possible, and all applicable state and federal statutes and rules;
13. Firefighters operating at hazardous material incidents are qualified, in accordance with the Occupational Safety and Health Administration (OSHA)1901.120;
14. Keep records and reports of all emergency calls as they pertain to the designated Zone and provide a summary of the same;
15. That the City Manager of a City Fire and/or EMS Department or his designee shall be the liaison with the District.
16. That the Fire Chief or EMS Director and/ or the President of a 501 (c) (3) Volunteer Fire Department, or his designee, shall be the liaison with the District.
17. Participate in fire and/or EMS Injury and Illness prevention education and training program activities such as CPR, AED, etc., when possible.
18. Provide additional protection coverage in the District by responding to a mutual aid call as part of a mutual aid agreement.
19. Participate with the Cameron County Fire Marshal’s Office and provide documentation when applicable for monitoring or conducting a site review.



# ESD FIRE PROTECTION

## EMERGENCY SERVICE DISTRICT ZONES

FIRE STATIONS in CAMERON COUNTY, TX. YR 2014



- SANTA ROSA FIRE STATION
- LA FERIA FIRE STATION
- HARLINGEN FIRE STATIONS
- SAN BENITO FIRE STATIONS
- ARROYO COLORADO FIRE STATION
- RIO HONDO FIRE STATION
- LOS FRESNOS FIRE STATION
- BROWNSVILLE FIRE STATIONS
- PORT ISABEL FIRE STATION
- LAGUNA VISTA FIRE STATION
- SOUTH PADRE ISLAND FIRE STATION

- Zone 1 CITY OF BROWNSVILLE
- Zone 2 CITY OF HARLINGEN
- Zone 3 CITY OF LOS FRESNOS V.F.D.
- Zone 4 CITY OF RIO HONDO
- Zone 5 CITY OF PORT ISABEL
- Zone 6 CITY OF SOUTH PADRE ISLAND
- Zone 7 CITY OF SANTA ROSA
- Zone 8 CITY OF LA FERIA
- Zone 9 CITY OF SAN BENITO
- Zone 10 ARROYO CITY V.F.D.
- City Limits / NOT IN CEESD

**E 9-1-1**  
**County Road Map**  
 Carlos H. Cascos, CPA - County Judge  
 Sofia C. Bonavides - County Commissioner Pct. 1  
 David A. Garza - County Commissioner Pct. 3  
 Dan A. Sanchez - County Commissioner Pct. 4

This map was prepared by the County Engineer's Office for the County of Cameron, Texas, and is intended to provide information only. It is not intended to be used as a legal document. The County Engineer's Office is not responsible for any errors or omissions in this map. The County Engineer's Office is not responsible for any damages or losses resulting from the use of this map. The County Engineer's Office is not responsible for any claims or lawsuits filed against the County of Cameron, Texas, or any of its employees, officers, or agents, arising out of or in connection with the use of this map. The County Engineer's Office is not responsible for any claims or lawsuits filed against the County of Cameron, Texas, or any of its employees, officers, or agents, arising out of or in connection with the use of this map.

**CAMERON COUNTY**  
**TEXAS**

# **Push Water Needs**

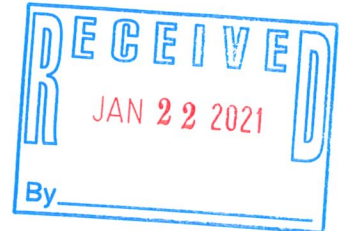
11

# CAMERON COUNTY IRRIGATION DISTRICT NO. TWO

26041 FM 510 P.O. BOX 687 SAN BENITO, TEXAS 78586  
Phone (956) 399-2484 Fax (956) 399-4721

Sam Simmons - President Brady Taubert - Vice President  
William Goad - Secretary Buck Rhyner - Member Lupe Argullin - Member

**Sonia Lambert - General Manager**



January 14, 2021

City of Rio Hondo  
c/o Mr. Ben Medina  
P.O. Box 389  
Rio Hondo, TX 78583

Subject: Water Shortages

Dear Mr. Medina,

Cameron County Irrigation District #2, (District), expects a water shortage for irrigation deliveries, within the next 90 days, which could make it difficult to maintain deliveries to municipal suppliers. This projection is subject to change depending on in-flows to the Falcon and Amistad Reservoirs. The District will provide you with monthly updates.

If you have any questions, please do not hesitate to contact me at 956-399-2484 or at [ccid2@swbell.net](mailto:ccid2@swbell.net).

Sincerely,

A handwritten signature in blue ink that reads "Sonia Lambert". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Sonia Lambert  
General Manager

SL/vl