

INTERLOCAL PARTICIPATION AGREEMENT

This Interlocal Participation Agreement (“Agreement”) is entered into by and between Texas Public Energy Alliance (“TPEA”), a non-profit political subdivision corporation organized under Chapter 22 of the Texas Business Organizations Code and Chapter 304 of the Texas Local Government Code, and the undersigned, a political subdivision of the State of Texas (“Member”).

WHEREAS, TPEA is organized and operated exclusively to act as an agent to negotiate the purchase of electricity and electricity related services, or to likewise aid or act on behalf of the political subdivisions for which the corporation was created, with respect to their own electricity use for their respective public facilities and to undertake all other lawful acts not prohibited to be undertaken by a political subdivision corporation described in Tex. Loc. Gov’t Code §§ 304.001 et seq; and

WHEREAS, Member has passed the Resolution Authorizing a Political Subdivision to Participate in the Texas Public Energy Alliance, whereby Member approved of the Certificate of Formation and the Bylaws of TPEA; and

WHEREAS, Member wishes to obtain electricity for its public facilities through TPEA in order to benefit its stakeholders.

NOW, THEREFORE, for and in consideration of the mutual agreements and promises set forth herein, TPEA and Member agree as follows:

ARTICLE ONE: TPEA RESPONSIBILITIES

1.01 TPEA agrees to engage in the competitive solicitation of electricity on behalf of Member, either individually or as part of an Energy Aggregation Pool (“EAP”) created by TPEA and its Energy Consultant, in accordance with applicable laws of the state of Texas.

1.02 For Individual Contracts, TPEA agrees to solicit pricing from the Retail Electricity Providers (“REP”) and to negotiate the terms of a standard contract agreed to by Member for energy services on behalf of Member with the REP selected. For EAP Contracts, TPEA agrees to solicit pricing on behalf of the EAP and to negotiate the terms of a standard contract to be used by members of the EAP, including Member, with the REP selected by TPEA on behalf of the EAP.

1.03 TPEA agrees to assist Member with the addition or deletion of metered accounts with the REP during the duration of the Member’s contract with TPEA and the REP.

1.04 Upon request by Member, TPEA will make a good faith effort to negotiate on Member’s behalf settlements of reasonable disputes regarding Member’s electric or natural gas service. Provided, however, that TPEA assumes no liabilities or responsibilities to: 1) engage in protracted negotiations; 2) reach any settlement; or 3) reach any settlement to Member’s satisfaction.

ARTICLE TWO: MEMBER RESPONSIBILITIES

2.01 Member agrees to participate in TPEA's electricity procurement program (the "Program") and represents that its governing body has authorized a resolution to allow Member to participate in the Program. Member agrees that, upon execution of this Agreement by Member, TPEA shall be Member's exclusive agent for the procurement of electricity services continuing for a minimum twelve (12) month period (the "Exclusivity Period") so that Member's electricity supply requirements may be submitted for competitive solicitation by TPEA. This exclusivity requirement is limited to Member's accounts in localities served by an electric utility that is subject to electricity deregulation. Member agrees to fully cooperate with TPEA and its Electricity Consultant (the "Consultant") during the competitive solicitation and negotiation process, and Member agrees that it shall not enter into any other electricity supply agreement, solicitation, or negotiation during the Exclusivity Period.

2.02 Member agrees to designate an individual as its authorized representative ("Member Representative"), which Member Representative shall be approved by the Superintendent and/or his or her authorized designee, to act as Member's authorized agent with respect to the Program. Member agrees that the Member Representative shall have express authority to represent Member and to contract on behalf of Member with respect to the Program, and Member agrees that TPEA shall not be required to seek approval of or contact any other individual regarding any matters related to the Program. Member agrees that all notices required to be given to Member shall be properly delivered if delivered to the Member Representative. Member reserves the right to change its Member Representative, which change shall be effective when given in the manner prescribed by the Notice provisions contained in Section 5.03 of this Agreement and confirmed in writing by TPEA.

2.03 Member agrees to provide account information, including service addresses, ESI ID numbers, account numbers, current electricity supply contract, and load data for all of Member's current accounts located in localities subject to electricity deregulation. Member warrants and represents that the account information it provides to TPEA is accurate to the best of its knowledge, and Member agrees to verify the accuracy of the accounts submitted for bid in the solicitation process and in the agreement negotiated by TPEA with the REP. This information shall be provided to TPEA by Member within ten (10) business days of the execution of this Agreement.

2.04 Member agrees to execute a letter of authorization to allow TPEA and/or Consultant to obtain Member's electricity usage data from the Member's local utility or utilities.

2.05 If TPEA presents to Member a proposed Electricity Supply Contract that is acceptable to Member, Member agrees to execute the electricity supply contract (the "Electricity Supply Contract") negotiated by TPEA to purchase electricity to satisfy all of Member's electricity requirements for all of Member's accounts in localities subject to electricity deregulation for a minimum twelve (12) month period commencing upon the expiration of Member's current electricity supply contract (or, if Member is not subject to a current electricity supply contract, commencing upon _____, 20__) based upon the prices obtained by TPEA through the Program. Member agrees that time is of the essence, and agrees to execute the Electricity Supply Contract within the time period required by the REP. Member's governing board hereby authorizes

the Superintendent, Chief Operating Officer, or Member Representative to execute the Electricity Supply Contract negotiated by TPEA.

2.06 Member agrees to notify TPEA and/or the Consultant and the REP in the event Member obtains additional metered accounts or disconnects metered accounts during the term of the Electricity Supply Contract. Member agrees that additional metered accounts shall be subject to the existing Electricity Supply Contract awarded through the Program.

ARTICLE THREE: PRICING, DUES, AND CONSIDERATION

3.01 As consideration for Member's participation in the Program, and subject to Member signing an Electricity Supply Contract through TPEA, Member agrees to pay TPEA the fees described in the Member Pricing Sheet, attached as Exhibit A and incorporated herein by reference (the "TPEA Fees"). The TPEA Fees shall be generated by the Electricity Supply Contract. The TPEA Fees shall be collected by the REP and paid to TPEA and/or Consultant. In the event that the REP does not make payment to TPEA and/or Consultant, Member shall be responsible for payment of TPEA Fees to TPEA and/or Consultant upon invoice by TPEA and/or Consultant. Member agrees that all amounts payable to TPEA and/or Consultant under this Agreement are fair compensation for the services provided by TPEA and/or Consultant under this Agreement.

3.02 As consideration for Member's participation in the Program, TPEA agrees to rebate to Member the rebates described in the Member Pricing Sheet in the amounts and according to the schedules described therein.

3.03 Member shall be permitted to designate a representative to participate in the TPEA Advisory Panel. The Advisory Panel shall review the REPs responses to TPEA's requests for proposals ("RFP") to the REPs, and shall vote to approve qualified REPs for participation in the Program.

ARTICLE FOUR: TERM, TERMINATION, AND RELATIONSHIP OF THE PARTIES

4.01 The initial term of this Agreement shall commence upon execution of the Agreement by Member and shall continue through the expiration of the initial Electricity Supply Contract. Three (3) months prior to the expiration of the initial or any subsequent Electricity Supply Contract, TPEA shall provide Member written notice of renewal. The conditions of this Agreement shall apply to the initial term and to all renewal terms. If Member does not provide a notice to TPEA in response to TPEA's written notice of renewal at least 30 days prior to the expiration of the Electricity Supply Contract awarded through TPEA, then this Agreement automatically renews. Notwithstanding the foregoing, should the Member enter into a subsequent Electricity Supply Contract utilizing the TPEA program prior to 3 months before the expiration of an Electricity Supply contract, then no renewal notice is required and this agreement is automatically renewed to the end of any subsequent Electricity Supply Contract.

4.02 In the event of material breach of this agreement by TPEA, Member may terminate this agreement by providing TPEA with written notice of such breach and providing TPEA thirty (30) days opportunity to cure such breach after TPEA's receipt of such notice. Notwithstanding the foregoing, Member may not terminate unless all TPEA Fees have been paid in full.

4.03 In the event Member fails to pay any TPEA Fees, TPEA may terminate this Agreement by providing Member ten (10) days written notice of such breach and providing Member ten (10) days opportunity to cure after Member's receipt of such notice. In the event of any other material breach of this Agreement by Member, TPEA may terminate this agreement by providing Member with thirty (30) days prior written notice of such breach and providing Member thirty (30) days opportunity to cure such breach after Member's receipt of such notice.

4.04 In the event of termination by either party during the term of this Agreement, Member shall be solely responsible for any increases in cost of electricity after termination and for any unpaid amounts due under this Agreement. TPEA may seek all amounts due and owing from Member, including fees from any Electricity Supply Contracts awarded through TPEA, and Member shall not be entitled to a refund of any Membership Fees or TPEA Fees paid. All rights of Member to receive rebates under this Agreement shall terminate upon termination.

4.05 Nothing in this Agreement will be construed to make TPEA or its Consultant a financial, investment, or legal advisor to Member. TPEA and/or Consultant is not and is not to be construed as the "agent" of Member or acting in any similar capacity or standing, unless otherwise provided herein, and then, only for the limited circumstances under which such designation applies.

4.06 TPEA and Consultant will endeavor to ensure that the bidding, solicitation, and award of the Electricity Supply Contract is conducted at commercially reasonable market based prices based on conditions that prevail at the time the Electricity Supply Contract is executed. TPEA and Consultant do not and cannot guarantee any particular financial result under this Agreement or the Electricity Supply Contract, and are not responsible for changes in market conditions and electricity prices either before or after this Agreement or before or after award of the Electricity Supply Contract. Nothing set forth in this Agreement is intended to establish a standard of care applicable to fiduciary or similar trust relationship. Except as expressly stated in this Agreement, neither Member nor TPEA have any separate obligations or duties, including without limitation, any fiduciary duties or other implied duties with respect to their obligations under this Agreement. Neither TPEA and/or Consultant nor their Affiliates will be responsible for any business opportunities that may not be realized by Member. The parties waive, to the fullest extent permitted by Applicable Law, any fiduciary or other similar duties that may arise in connection with the Agreement.

4.07 The Member agrees that it will satisfy any procedural obligations required under 2 CFR 200, and that TPEA shall have no responsibility for compliance with such requirements, except that TPEA will retain and furnish to the Member all documentation related to TPEA's procurement of the Member's electricity. TPEA will further notify potential vendors, in the solicitation documents, that vendors will be required to provide any and all certifications to the government customer that may be required by law.

MISCELLANEOUS

5.01 This agreement shall be construed in accordance with the laws of the State of Texas. Any cause of action, claim, or dispute arising out of this agreement shall be subject to the laws of the state of Texas, and venue shall be in the courts in Harris County, Texas.

5.02 Subject to applicable laws, Member agrees that it will comply with any reasonable requests for information and records made by TPEA, and its consultant, and agrees that TPEA may audit the relevant records of any Member. Failure of any Member to comply with this section shall be a material breach.

5.03 All notices required to be provided under this Agreement shall be sent by certified mail, return receipt requested, to the following:

If to Member:

If to TPEA:

Texas Public Energy Alliance
2726 Bissonnet, Suite 240-136
Houston, Texas 77005

All changes in notice address shall be submitted per the terms of this subsection.

5.04 TPEA AND/OR ITS CONSULTANT DO NOT WARRANT THAT THE OPERATION OR USE OF SERVICES UNDER THIS AGREEMENT WILL BE UNINTERRUPTED OR FREE FROM ERROR. TPEA, ITS CONSULTANTS, AND CONTRACTORS, HEREBY DISCLAIM ANY AND ALL WARRANTIES EXPRESS OR IMPLIED WITH RESPECT TO ANY INFORMATION, PRODUCT, OR SERVICE FURNISHED UNDER THIS AGREEMENT OR THE PROGRAM, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES AGREE THAT NEITHER TPEA AND/OR CONSULTANT NOR MEMBER SHALL BE LIABLE TO THE OTHER UNDER ANY CIRCUMSTANCES RELATING TO OR ARISING FROM THIS AGREEMENT, THE ELECTRICITY SUPPLY CONTRACT, OR ANY ACTIONS OF THE PARTIES RELATING IN ANY WAY THERETO FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, BUSINESS INTERRUPTION, PUNITIVE, OR EXEMPLARY DAMAGES; WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE AND REGARDLESS OF THE FAULT, NEGLIGENCE (IN WHOLE OR IN PART) OR STRICT LIABILITY OF THE PERSON WHOSE LIABILITY IS LIMITED); BREACH OF CONTRACT OR BREACH OF WARRANTY, OR OTHERWISE.

5.05 The illegality, invalidity, or unenforceability in whole or in part, of any provision of this Agreement will not affect the legality, validity and enforceability of the remaining provisions of this Agreement.

5.06 No modification, amendment, or other change to this Agreement will be binding on any Party unless consented to in writing executed by both Parties.

5.07 Failure by a Party to exercise any of its rights or remedies under this Agreement does not constitute a waiver of such rights or remedies. Neither Party will be deemed to have waived any right or remedy to which it may be entitled, any provision of this Agreement, or any failure of default of the other Party unless it has made such waiver specifically in writing.

5.08 This Agreement may be executed in one or more counterparts and by different Parties in separate counterparts, each of which will be deemed an original and all of which will be deemed one and the same Agreement. The delivery of an executed counterpart to this Agreement by electronic means is effective for all purposes as the delivery of a manually executed counterpart.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered as of the Execution Date.

TEXAS PUBLIC ENERGY ALLIANCE

By: _____
Name: _____
Title: _____

[_____]

By: _____
Name: _____
Title: _____