V - DATA TO BE INCLUDED IN PLANS

A. Sewer Data to be Included on Plan Sheet

- The plan shall show the existing and proposed water and sewer lines and all appurtenances thereto. The plan should also have the storm sewer system dashed in. All lines shall be numbered, lettered or otherwise designated on both plan and profile sheets. All lines shall show sizes and direction of flow on both the plan and profile sheets. Stationing shall be shown to the nearest 0.1 foot and each new line shall begin at 0+00 at the outlet and increase up the sewer. Station pluses at all junctions of sewers, horizontal P.C.'s, and P.T.'s, bends, angle points, wyes, manholes, the centerlines of all cross streets and railroads, and all crossing utilities, etc., shall be shown on both plan and profile. The degree of angles and horizontal curve data shall be shown on the plan only. Minimum Radius for sanitary sewer mains is 200 feet by pulling pipe not joints. Sewer laterals shall be shown at a location most convenient to serve the property.
- 2) Sewer laterals will usually be near the center of the lot, either at the street or alley. If the lateral is to be adjacent to the water service, then show the lateral 10 feet downstream. The location shall be designated on the plans.

B. Sewer Data to be Included on the Profile Sheet

The data for the profile sheet shall be obtained by running a line of levels along the actual route and by taking any other necessary observations. Profiles shall show the elevations to the nearest 0.1 foot of the ground at the centerline of the sewer, and to the right and left of the centerline of the sewer at the location of the approximate center of the proposed houses or buildings to be served, and the approved street or alley grade. Profiles shall also show the sewer pipe, manholes, etc. The size of the sewer, the direction of the flow, and the grade to the nearest 0.01% shall be indicated just over the "pipe" and the total linear footage of line, size, kind of pipe, and type of embedment or encasement shown below the "pipe". The design flow, pipe capacity and velocity must be shown in the profile. All of the information pertaining to the horizontal data, station pluses, appurtenances to be built, etc., is usually shown just above the ground line, whereas, the flow line (invert) elevations are shown below the pipe. Elevations of crossing and parallel utilities shall be shown. All invert elevations shall be shown to the nearest 0.01-foot. Invert elevations shall be recorded at all junctions (all lines-in and out), at grade breaks, the ends of lines, or other points as requested by the City

Engineer. Benchmarks used shall also be clearly shown, giving the descriptive locations and elevations. Elevations must be from sea level datum, not assumed. Bench level circuits should begin at a USGS monument and benchmark of second order accuracy established at least every one-half mile through the project. All existing water, sewer, gas, storm sewer, telephone, power, and other utilities parallel to or crossing the proposed sewer or water line shall be adequately designated as to size, type, and location.

C. Data to be Included for Water Plan and Profile

1) Indicate the location of any existing valves required for shutdown purposes and of any tees, ends, etc., to be tied into. Indicate clearly the sizes of the lines to be installed, and all proposed valves, fire hydrants, tees, bends, reducers, plugs, sleeves, wet connections, tap connections, creek, railroad or highway crossings, tunnels, meter boxes, valve vaults, and other appurtenances at each intersection or as required. Where the pipe is to be laid around a curve, the curve data must be provided. The size and type of services and the material, type of joint, and class of pipe may be indicated by adequate notation in the lower left- or right-hand corners of the plan sheet. Water services and meter boxes shall be indicated and shall be located at or near the center of the front of each lot. Waterline profiles are required on lines 12-inches and larger, follow the general procedures as outlined for sewers, except that the grades and elevations of the proposed water line usually need not be shown closer than the nearest 0.1-foot except at P.V.I.'s where the elevation shall be shown to the nearest 0.01-foot for field calculation purposes.

APPENDIX "A"

SANITARY SEWER DAILY FLOW CALCULATIONS

Apartment Sanitary Sewer Flow

95 gal. x .75 = 71.25 gal. per day per person 22 units per acre with 3 persons per unit Calculations (71.25) (22) (3) = 4,702 or 4,700 gallons per day per acre.

Office Sanitary Sewer Flow

3100 parking spaces for 34.7 acres

One person per parking space
20 gallons per person per day
3100 = 89.33 persons per acre (20 gal) = 1,786.7 or 1,790 gallons per day per acre.
34.7 acres

Residential Sanitary Sewer Flow

95 gallons per person per day
4 units per acre
3.5 persons per unit
(95) (4) (3.5) = 1330 gallons per acre per day

Nursing Home Sanitary Sewer Flow

150 beds -heritage Manor 90 gallons per day per bed 90 x 150 = 13,500 gallons per day

Patio Home Sanitary Sewer Flow

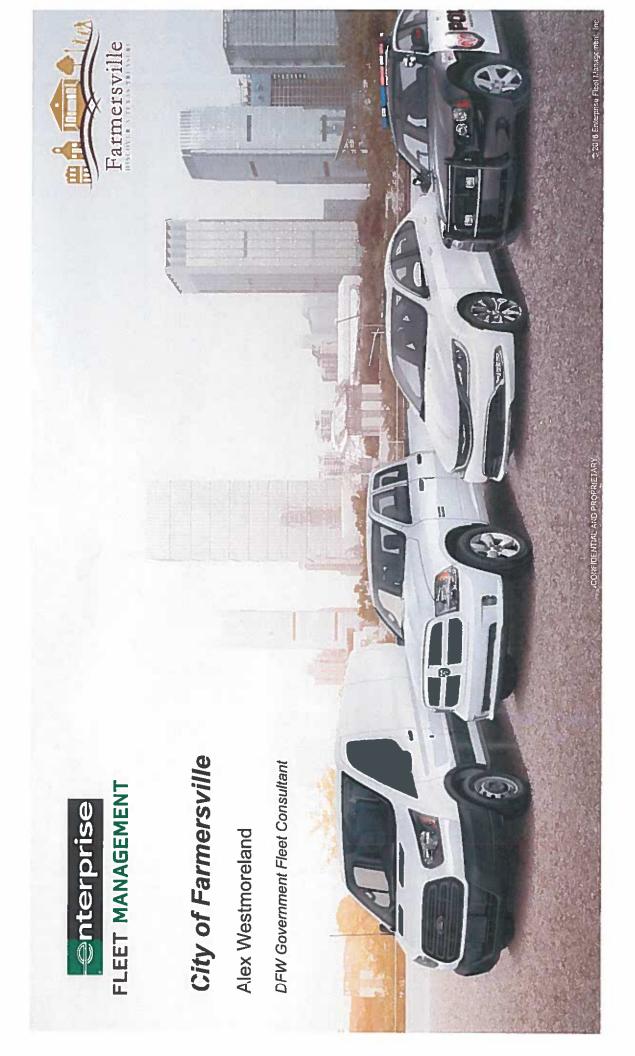
95 gallons per person per day 10 units per acre 3.5 persons per unit (95) (10) (3.5) = 3,325 gallons per day/acre

Add 500 gallon per acre per day for inflow and infiltration. Peaking factor shall be applied to daily flow calculations but not to inflow and infiltration. Peak factors shall be in accordance with ASCE Manual and Reports on Engineering Practice No. 60/WPCF Manual of Practice No. FD-5. Generally, the following factors applies:

Acres	Peaking Factor
0-65	5
70	4.9
80	4.8
85	4.78
90	4.72
100	4.66
110	4.62
120	4.50
130	4.35
140	4.25
150	4.20

VIII. Regular Agenda

Agenda Section	Pegular Agenda
	Regular Agenda
Section Number	VIII.A
Subject	Consider, discuss and act regarding vehicle purchases with Enterprise Fleet Management.
То	Mayor and Council Members
From	Ben White, City Manager
Date	July 28, 2020
Attachment(s)	Presentation
Related Link(s)	http://www.farmersvilletx.com/government/agendas_and_minutes/cit y_council_meetings.php
Consideration and Discussion	City Council discussion as required
Action	 Motion/second/vote □ Approve □ Approve with Updates □ Disapprove • Motion/second/vote to continue to a later date. □ Approve □ Disapprove • Move item to another agenda. • No motion, no action



Current Clients - Cities in North & East Texas

















BALCH SPRINGS GROWING COMMUNITY















Key Points

FLEET MANAGEMENT

enterprise

Locally

- Over 100 Government clients in the State of **Texas**
- Over 7,500 vehicles under management

HALTOM CITY

* EVERNALAIN

WENT ASS

THE CHANGE

Anna GITY OF ANNA, TEXAS

Nationally

PALESTINE

EXAS . 1846

- Over 1,000 Government Clients
- Over 73,000 vehicle under management







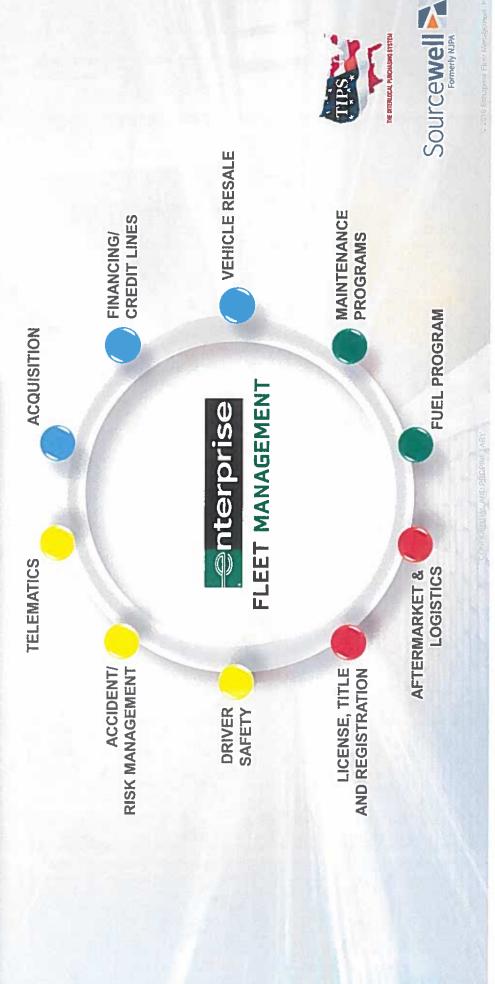
City of Alvarado





DELIVERING SOLUTIONS. DRIVING RESULTS.





Current Fleet - City Of Farmersville

21

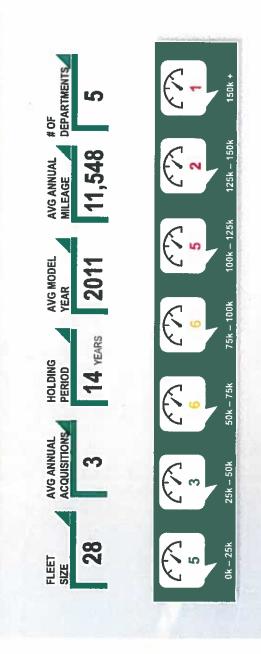
Chevrolet

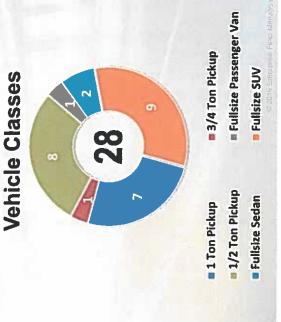
9

Ford

Dodge

Manufacturers





10

Model Year Analysis

2012 <2011

2014 2013

2015

2016

2017

2018

2019

2020

4

m

0

TOTAL COST OF OWNERSHIP CONCEPT

TOTAL COST OF BUY & HOLD FOR A 1/2 TON PICKUP

REPAIRS | DEPRECIATION | \$17,350 | 29% | 29% | 29% | 29% | 29% | 45% | 45% |

enterprise

TOTAL COST OF BUY & HOLD FOR A 1/2 TON PICKUP \$66,147



Assumes 10 year holding period at 15,000 miles per year

Total amount is determined without consideration for Income Tax time value of money (present value) concepts or inflation. Assumos a holding paired of 10 years at 15,000 miles per year.

2019 Enterprise Firer Manark

FARMERSVILLE'S CURRENT BUYING POWER







2019 ALL NEW SILVERADO 2WD Grew Cab, Short Bed LT

\$40,290 Net Price @



864E - Fuil Size, 1/2 Ton Crew Cab Pickup, SRW, 6-Passenger, Short Bed with opts 125, 133, and 805

864E - Full Size, 1/2 Ton Crew Cab Pickup, SRW, 6-Passenger, Short Bed with opts 125, 133, and 805

Contract 070-A1
Supplier Part Number 07202068641
Manufacturer Part # CC10543
Nake Chevrolet
Model Silverado 1500

Price **\$26,175.00**

EACH

MANHEIM AUCTION RESULTS

VEHICLE	Avg Odometer	Avg Sale Price	Capital Outlay	
2017 Chevy Silverado 1500 Crew Cab	46,852	\$26,169	\$6	
2018 Chevy Silverado 1500 Crew Cab	12,953	\$30,281	-\$4,106	

Keys to Sustainability for Farmersville Leveraging Enterprise's resale larger window of opportunity Moderate utilization enables Incredible buying power as consistently higher ROI Farmersville for maximizing resale network will provide Government entity 14 13 12 11 10 6 Time 00 EFFECTIVE VEHICLE LIFECYCLE 9 **Optimal Time** to Replace S 4 Market Value Maintenance m 2 Fuel 0 \$ Cost

OPERATING EXPENSES

Maintenance

OF ENAIMS EAFEINSES

For all new vehicles cycled into the fleet:

Full Maintenance

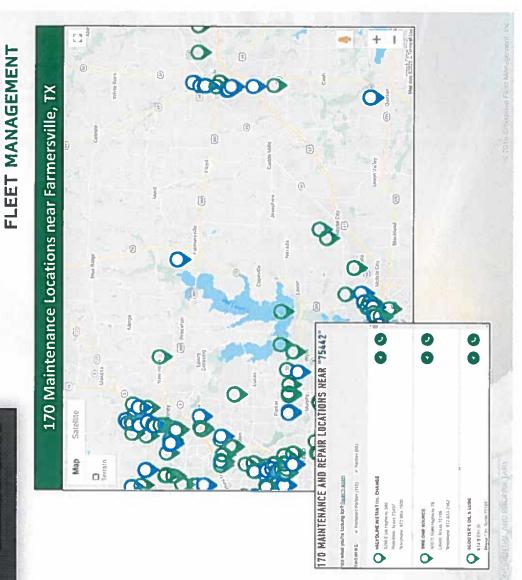
- Fixed monthly rate
- Simple process for all parties
- Includes: 24/7 Roadside, all major and minor repairs
- Removes you from the maintenance game

For the remaining vehicles:

Maintenance Management

- "Bridge" program for currently owned fleet vehicles
- Seamless experience for field drivers





FLEET MANAGEMENT **enterprise**

2007

- Front/Side crash test
- Anti-lock brakes
- Airbags

2012

- Electronic Stability Control
- Lane Departure Warning
 - Rear Video

2018

- Blind-spot warning
- Forward collision warning
- Improved headlamps Offset-crash test
- Rear video









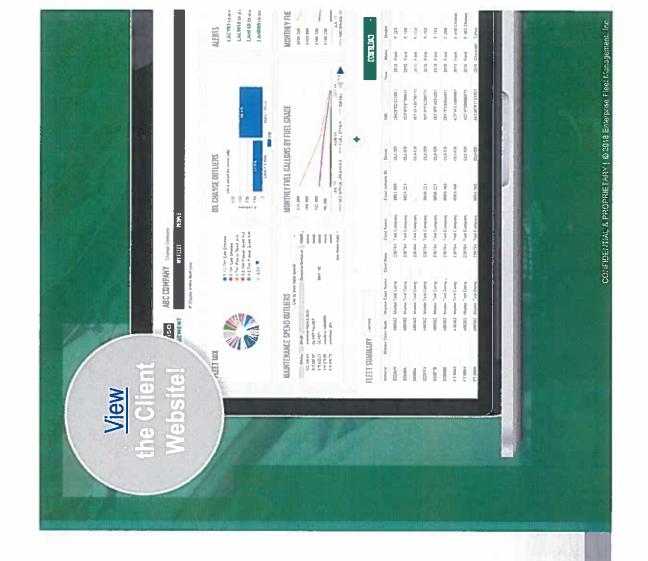
ENS.

RESOURCES

The **Data Warehouse** pulls from millions of data records to give you immediate access to important vehicle information.

Your staff will be trained on how to access vehicle information so you can track and measure your vehicles, and we can:

- Track Total Cost of Ownership
- Predict Operating Costs
- Visibility into Saving Opportunities
- Support Vehicle Replacement Plan
- Determine Most Efficient Fleet Plan
- Improve Driver Behaviors



FINANCIAL COMPARISON

ELEET MANAGEMENT

Famersville's Current Fleet Budget:

MAINTENANCE & FUEL \$126,073

CAPITAL \$147,176 53% Avg. Annual Fleet Budget w/ Current Plan \$273,249

Famersville's Budget with Enterprise Fleet:

MAINTENANCE & FUEL \$81,939

CAPITAL \$173,144 67% Avg. Annual Fleet Budget w/ EFM Plan

\$255,083

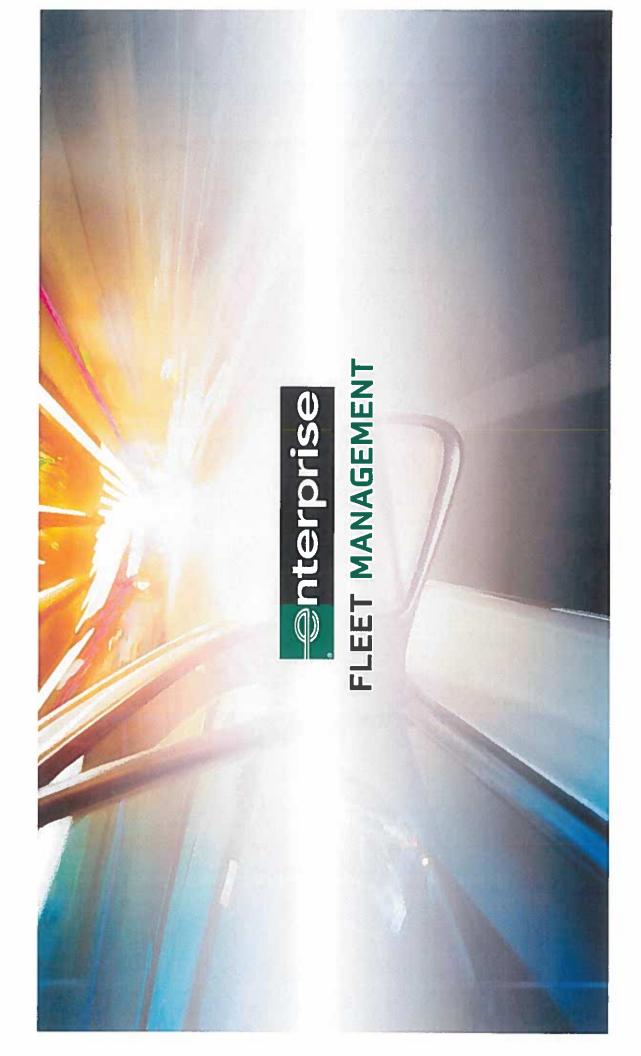
Est. Savings Over 10 Years

\$181,644

FLEET PLAN COMPARISON - Evaluating Soft Costs

City of Fa	City of Farmersville - Current Fleet Plan
	 Departments locating dealers and working with inventory they have on-hand.
Acquisition	Departments working with aftermarket vendors for up-fit needed.
	Department heads coordinating vehicle pickup and aftermarket up-fit coordination
Administrative	 Department heads handling registration renewals every year
	 City employees writing checks to vendors each month
Funding	 Paying cash for all non-ERV vehicles.
	City employees spending time to establish accounts with local vendors
M. Santa	No specialized oversight to make sure the right work is getting done.
	 Employees manually cutting checks each month
	No intelligent system for tracking preventative maintenance to ensure compliance
Fuel	Utilizing WEX fuel cards to track and expense fuel purchases
Resale	 Holding onto vehicles until very little resale value remains. Selling at auction is attractive for convenience
Technology	 Tracking everything manually in Microsoft Office programs. Updates are all manual per department.
Annual Fleet Planning	 Each department requests vehicle needs during budget season, and management decides what is a priority working within the annual budget
	 No data or resources available to evaluate cost- effectiveness of different manufacturers each year.

City of F	City of Farmersville's Fleet Plan w/ EFM
Aconicition	 EFM handles all aspects of vehicle purchases on the City's behalf.
individual de la constantina della constantina d	 EFM coordinates aftermarket purchase and up-fit for the City.
	Local Account Team handles all logistics of delivering a turnkey
Administrative	Account Fleet Coordinator handles annual registration renewals.
	All payments handled by EFM and passed through to the City on
The state of the s	next months monthly statement.
Eunding	EFM recommending a market value finance. This allows the City to
Simona	pay less each year but still have benefits of ownership.
3800 30 8030 23	The City will enroll in the Enterprise network that has over 1,000
	maintenance locations in DFW.
	ASE Certified technicians field maintenance approvals for the City.
	Ensure cost is correct and no over-servicing.
Maintenance	 EFM pays maintenance vendors on the City's behalf, requiring no
	checks to be cut by City employees.
	 Maintenance records are tracked per vehicle on City's fleet portal.
	Notifications sent to departments reminding for maintenance
	completion.
1010	 EFM uses WEX as well. This is an easy transfer. EFM handles all fuel.
ian.	tax write-offs for the City.
	 EFM will sell vehicles on the City's behalf with the goal to maximize
Decod	equity to give back to the City. Only 10% of vehicles EFM sells are
Nessel B	sold to auction. EFM primarily sells vehicles directly to independent
	dealers and similar avenues with higher average returns.
	 EFM provides robust Online Dashboard to track all vehicle assets.
Tocharlos	All drivers will also get access to a mobile app that can help with
490000000	aspects such as finding a maintenance location, roadside assistance,
	and reaching the City's Account Team.
	 The City will have a dedicated local Account Manager who meets
	with the city 3-4 times/year to review the annual fleet plan and
Annual Fleet Disoning	bring recommendations for potential cost-savings opportunities.
	 EFM's data and resources leveraged to evaluate all different
	manufacturers and holding periods for the lowest Total Cost of
	Ownership.



Agenda Section	Regular Agenda
Section Number	VIII.B
Subject	Consider, discuss and act upon an audit contract with Brooks Watson & Co.
То	Mayor and Council Members
From	Ben White, City Manager
Date	July 28, 2020
Attachment(s)	Contract
Related Link(s)	http://www.farmersvilletx.com/government/agendas and minutes/cit y council meetings.php
Consideration and Discussion	City Council discussion as required
Action	 Motion/second/vote Approve Approve with Updates Disapprove Motion/second/vote to continue to a later date. Approve Disapprove Move item to another agenda. No motion, no action



July 20, 2020

City of Farmersville, Texas 205 South Main Street Farmersville, Texas 75442

Dear Mayor & Council:

The following represents our understanding of the services we will provide the City of Farmersville, Texas (the "City).

You have requested that we audit the financial statements of the governmental activities, the business-type activities, the discretely presented component units, each major fund, and the aggregate remaining fund information of the City of Farmersville, as of September 30, 2020, for the year then ended and the related notes to the financial statements, which collectively comprise the City's basic financial statements as listed in the table of contents. We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter. Our audit will be conducted with the objective of our expressing an opinion on each opinion unit.

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, pension information, and budgetary comparison information be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context.

As part of our engagement, we will apply certain limited procedures to the required supplementary information (RSI) in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist primarily of inquiries of management regarding their methods of measurement and presentation, and comparing the information for consistency with management's responses to our inquiries. We will not express an opinion or provide any form of assurance on the RSI. The following RSI is required by accounting principles generally accepted in the United States of America.

City of Farmersville Engagement Letter Page 2 of 8

This RSI will be subjected to certain limited procedures but will not be audited:

- 1) Management's discussion and analysis
- 2) Budgetary Comparison Information
- 3) Pension and OPEB schedules

Supplementary information other than RSI will accompany the City's basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and perform certain additional procedures, including comparing and reconciling the supplementary information to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and additional procedures in accordance with auditing standards generally accepted in the United States of America. We intend to provide an opinion on the following supplementary information in relation to the financial statements:

- 1) Individual nonmajor fund financial statements and schedules
- 2) Combining statements

The Objective of an Audit

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in accordance with generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America and will include tests of the accounting records and other procedures we consider necessary to enable us to express such opinions. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions on the financial statements are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

General Audit Procedures

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to error, fraudulent financial reporting, misappropriation of

City of Farmersville Engagement Letter Page 3 of 8

assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

Internal Control Audit Procedures

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements may not be detected exists, even though the audit is properly planned and performed in accordance with U.S. GAAS.

In making our risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit.

Compliance with Laws and Regulations

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with the provisions of applicable laws, regulations, contracts, and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

Management Responsibilities

Our audit will be conducted on the basis that management and those charged with governance acknowledge and understand that they have responsibility:

- a. For the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America;
- b. For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to error, fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements; and
- c. To provide us with:
 - Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation, and other matters;

City of Farmersville Engagement Letter Page 4 of 8

- ii. Additional information that we may request from management for the purpose of the audit; and
- iii. Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.
- d. For including the auditor's report in any document containing financial statements that indicates that such financial statements have been audited by the entity's auditor;
- e. For identifying and ensuring that the entity complies with the laws and regulations applicable to its activities; and
- f. For adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the current year period(s) under audit are immaterial, both individually and in the aggregate, to the financial statements as a whole.

With regard to the supplementary information referred to above, you acknowledge and understand your responsibility: (a) for the preparation of the supplementary information in accordance with the applicable criteria; (b) to provide us with the appropriate written representations regarding supplementary information; (c) to include our report on the supplementary information in any document that contains the supplementary information and that indicates that we have reported on such supplementary information; and (d) to present the supplementary information with the audited financial statements, or if the supplementary information will not be presented with the audited financial statements, to make the audited financial statements readily available to the intended users of the supplementary information no later than the date of issuance by you of the supplementary information and our report thereon.

As part of our audit process, we will request from management and those charged with governance, written confirmation concerning representations made to us in connection with the audit.

With respect to any nonattest services we perform, we will assist the City with the preparation of the City's financial statements and certain schedules. The City's management is responsible for (a) making all management decisions and performing all management functions; (b) assigning a competent individual to oversee the services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities.

City of Farmersville Engagement Letter Page 5 of 8

Reporting

We will issue a written report upon completion of our audit of the City's basic financial statements. Our report will be addressed to the governing body of the City. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement.

Other

We understand that your employees will prepare all confirmations we request and will locate any documents or support for any other transactions we select for testing.

If you intend to publish or otherwise reproduce the financial statements and make reference to our firm, you agree to provide us with printers' proofs or masters for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before it is distributed.

(This section intentionally left blank.)

City of Farmersville Engagement Letter Page 6 of 8

Provisions of Engagement Administration, Timing and Fees

During the course of the engagement, we may communicate with you or your personnel via fax or e-mail, and you should be aware that communication in those mediums contains a risk of misdirected or intercepted communications.

The timing of our audit will be scheduled for performance and completion as follows:

	Begin	Complete
Document internal control and preliminary tests	TBD by City	Prior to Aug 31
Mail confirmations	October 1st	October 1st
Perform year-end audit procedures	January	February
Issue audit report	n/a	March

Mike Brooks is the engagement partner for the audit services specified in this letter. His responsibilities include supervising BrooksWatson & Co., PLLC's services performed as part of this engagement and signing or authorizing another qualified firm representative to sign the audit report.

Our fees for the financial statement audit are all inclusive as follows:

Fiscal Year	Financial Statement Audit
2020	\$ 22,040

We will notify you immediately of any circumstances we encounter that could significantly affect this initial fee estimate. Whenever possible, we will attempt to use the City of Farmersville, Texas's personnel to assist in the preparation of schedules and analyses of accounts. This effort could substantially reduce our time requirements and facilitate the timely conclusion of the audit.

The invoice shall be rendered monthly based upon actual hours billed during the invoice period. We will notify you immediately of any circumstances we encounter that could significantly affect this initial fee estimate. In addition, we will work with you to identify any federal awards that might meet the criteria for a uniform guidance audit.

City of Farmersville Engagement Letter Page 7 of 8

Other Matters

During the course of the audit we may observe opportunities for economy in, or improved controls over, your operations. We will bring such matters to the attention of the appropriate level of management, either orally or in writing.

We agree to retain our audit documentation or work papers for a period of at least five years from the date of our report.

At the conclusion of our audit engagement, we will communicate to those charged with governance the following significant findings from the audit:

- Our view about the qualitative aspects of the entity's significant accounting practices;
- Significant difficulties, if any, encountered during the audit;
- Uncorrected misstatements, other than those we believe are trivial, if any;
- Disagreements with management, if any;
- Other findings or issues, if any, arising from the audit that are, in our professional judgment, significant and relevant to those charged with governance regarding their oversight of the financial reporting process;
- Material, corrected misstatements that were brought to the attention of management as a result of our audit procedures;
- Representations we requested from management;
- · Management's consultations with other accountants, if any; and
- Significant issues, if any, arising from the audit that were discussed, or the subject of correspondence, with management.

The audit documentation for this engagement is the property of BrooksWatson & Co., PLLC and constitutes confidential information. However, we may be requested to make certain audit documentation available to certain regulators and federal agencies and the U.S. Government Accountability Office pursuant to authority given to it by law or regulation, or to peer reviewers. If requested, access to such audit documentation will be provided under the supervision of BrooksWatson & Co., PLLC's personnel. Furthermore, upon request, we may provide copies of selected audit documentation to these agencies and regulators. The regulators and agencies may intend, or decide, to distribute the copies of information contained therein to others, including other governmental agencies.

If the foregoing is in accordance with your understanding, please indicate your agreement by signing and returning the attached copy of this letter to indicate your acknowledgment of, and agreement with, the arrangements for our audit of the financial statements including our respective responsibilities.

City of Farmersville Engagement Letter Page 8 of 8

We appreciate the opportunity to be your financial statement auditors and look forward to working with you and your staff.

Respectfully,
Brook Watson + Co.
BrooksWatson & Co. 14950 Heathrow Forest Pkwy Ste 530 Houston, TX 77032
按安培·
RESPONSE:
This letter correctly sets forth our understanding.
The City of Farmersville
Acknowledged and agreed on behalf of the City of Farmersville by:
Management
Name:
Title:
Date:
Council Representative
Name:
Title:
Date:

Agenda Section	Regular Agenda
Section Number	VIII.C
Subject	Consider, discuss and act upon using the Farmersville CARES Act funding towards business economic assistance using the Sulphur Springs program as an example.
То	Mayor and Council Members
From	Ben White, City Manager
Date	July 28, 2020
Attachment(s)	None
Related Link(s)	http://www.farmersvilletx.com/government/agendas and minutes/city council meetings.php
Consideration and Discussion	City Council discussion as required
Action	 Motion/second/vote Approve Approve with Updates Disapprove Motion/second/vote to continue to a later date. Approve Disapprove Disapprove Move item to another agenda. No motion, no action

Agenda Section	Regular Agenda
Section Number	VIII.D
Subject	Consider, discuss and act upon Council liaison's to the Parks & Recreation Board and the TIRZ Board.
То	Mayor and Council Members
From	Ben White, City Manager
Date	July 28, 2020
Attachment(s)	List of Council Liaisons
Related Link(s)	http://www.farmersvilletx.com/government/agendas and minutes/city_council_meetings.php
Consideration and Discussion	City Council discussion as required.
Action	 Motion/second/vote □ Approve □ Disapprove • Motion/second/vote to continue to a later date. □ Approve □ Disapprove • Move item to another agenda. • No motion, no action

City Council Liaisons

Current Positions (2019-2020)	
Councilmember	Board/Commission
Mayor Rice	
Mike Hurst	FEDC (4A)
Craig Overstreet	Planning & Zoning
Jim Hemby	City Amenities
Dwain Mathers	FCDC (4B)
Donny Mason	Building & Property Standards; Main Street

New Positions (2020-2021)		
Councilmember	Board/Commission	
Mayor Wiebold	-	
Mike Henry	Capital Improvement / Planning & Zoning	
Craig Overstreet	Main Street	
Dwain Mathers	FEDC (4A)	
Jim Hemby	Building & Property Standards / School Board	
Terry Williams	FCDC (4B) / City Amenities Board	
	Parks & Recs Board	
	TIRZ	

Boards and Commissions:

FEDC (4A)

TIRZ

School Board

FCDC (4B)

City Amenities Board

Main Street Board

Planning & Zoning Commission

Building & Property Standards

Parks & Recreation Board

Agenda Section	Regular Agenda
Section Number	VIII.E
Subject	Update regarding the Development Agreement with Nelson Brothers Ready Mix (Farmersville Plant, LLC).
То	Mayor and Council Members
From	Ben White, City Manager
Date	July 28, 2020
Attachment(s)	Update Report
Related Link(s)	http://www.farmersvilletx.com/government/agendas and minutes/city council meetings.php
Consideration and Discussion	City Council discussion as required.
Action	 Motion/second/vote Approve Approve with Updates Disapprove Motion/second/vote to continue to a later date. Approve Disapprove Move item to another agenda. No motion, no action

Reliable Concrete and Nelson Brothers Concrete Update

Reliable Concrete

- 1. Establish \$150K escrow account and \$95K lien. A specific priority lien was not established however the development agreement is structured to give us lien capability should the terms of the development agreement not be met (complete)
- 2. Extension of water line with meter (complete)
- 3. Petition for annexation (complete)
- 4. Issue CO for batch plant (complete)
- 5. Plant exceeds 25% capacity (6,000 yards per month, 197 yards per day) per month. (complete)
- 6. Execute paperwork so materials sold are FOB Farmersville (complete)
- 7. Pay applicable tap fees and impact fees (complete)
- 8. Reimburse \$37.5K to Reliable from escrow (compete)
- 9. Install lighting with no light pollution
 - a. Readjust light to improve glare to CR 699
- 10. Complete planting of trees and grass on perimeter.
 - a. Install irrigation system.
 - b. Complete ground cover
 - c. Some trees installed
 - d. Originally was to complete on 17 Jul 2020
- 11. Complete minimum eight foot screening wall
 - a. A few blocks remain to be completed on the southwest portion of the screen wall
 - b. Need to complete painting the screening wall
 - c. Originally was to complete on 17 Jul 2020
- 12. Complete platting of property. Establish use as industrial high impact
 - a. Public hearing to change land use held on 20 July, sent to council for approval
 - b. Scheduled for completion on 11 Aug 2020
- 13. Issue CO for operations building and maintenance building (14 Aug 2020)
- 14. Construct impervious internal driveways (31 Aug 2020)
- 15. Improvements to CR 699 (31 Aug 2020)
 - a. DBI nearing completion of engineering
 - b. DBI coordinating with Hunt and Collin County for permit requirements
 - c. Coordinating with KCS to see if we can re-asphalt section over the railroad. We are placing a priority on the portion of the project.
 - d. The City of Farmersville Public Works will need to finish the JW Spain parking lot project prior to constructing the concrete portion of the roadway.
- 16. Meet all requirements of performance criteria and development agreement (31 Aug 2020)

Nelson Brothers Concrete

- 1. Petition for annexation (complete)
- 2. Complete platting of property (need wording for OSSF, signatures and file). Establish use as industrial high impact
 - a. Public hearing to change land use held on 20 July, sent to council for approval
 - b. Scheduled for completion on 11 Aug 2020
- 3. Improvements to CR 699
- 4. Pay applicable tap fees and impact fees
- 5. Install minimum eight foot screening wall
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- 7. Install irrigation system
- 8. Install ground cover
- 9. Complete internal driveways with impervious surface
- 10. Install lighting with no light pollution
- 11. Execute paperwork so materials sold are FOB Farmersville

Section Number	VIII.F
Subject	Update regarding the Development Agreement with Reliable Concrete.
То	Mayor and Council Members
From	Ben White, City Manager
Date	July 28, 2020
Attachment(s)	Update Report
Related Link(s)	http://www.farmersvilletx.com/government/agendas and minutes/cit y council meetings.php
Consideration and Discussion	City Council discussion as required.
Action	 Motion/second/vote Approve Approve with Updates Disapprove Motion/second/vote to continue to a later date. Approve Disapprove Move item to a future agenda. No motion, no action

Agenda Section Regular Agenda

Reliable Concrete and Nelson Brothers Concrete Update

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 - d. The City of Farmersville Public Works will need to finish the JW Spain parking lot project prior to constructing the concrete portion of the roadway.
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Agenda Section	Regular Agenda
Section Number	VIII.G
Subject	Consider, discuss and act upon Resolution #R-2020-0728-001 regarding a professional service agreement with the Texas Coalition of Affordable Power.
То	Mayor and Council Members
From	Ben White, City Manager
Date	July 28, 2020
Attachment(s)	R-2020-0728-001 Professional Services Agreement Commercial Electric Service Agreement Explanation
Related Link(s)	http://www.farmersvilletx.com/government/agendas and minutes/city council meetings.php
Consideration and Discussion	City Council discussion as required.
Action	 Motion/second/vote Approve Approve with Updates Disapprove Motion/second/vote to continue to a later date. Approve Disapprove Move item to a future agenda. No motion, no action

CITY OF FARMERSVILLE RESOLUTION #R-2020-0728-001

RESOLUTION OF THE CITY COUNCIL OF THE CITY FARMERSVILLE, TEXAS, AUTHORIZING THE CITY MANAGER TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH THE TEXAS COALITION FOR AFFORDABLE POWER, INC. ("TCAP") TO PARTICIPATE IN A STRATEGIC HEDGING PROGRAM ("SHP") AND TO SIGN GEXA ENERGY'S COMMERCIAL ELECTRIC SERVICE AGREEMENT ("CESA") FOR POWER TO BE PROVIDED ON AND AFTER JANUARY 1, 2023

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

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

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

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

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

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

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

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

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

WHEREAS, the City desires to participate in the SHP.

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

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

PASSED AND APPROVED this 28th day of July, 2020.

	Bryon Wiebold, Mayor	
ATTEST:		
Sandra Green, City Secretary		
APPROVED AS TO FORM:		
City Attorney		

7907968 2

PROFESSIONAL SERVICES AGREEMENT BETWEEN

CITY OF FARMERSVILLE AND TEXAS COALITION FOR AFFORDABLE

POWER, INC.

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

SECTION 1 DURATION:

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

SECTION 2 PURPOSE OF AGREEMENT:

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

SECTION 3 OBLIGATIONS OF TCAP TO MEMBER:

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

SECTION 4 OBLIGATIONS AND RIGHTS OF MEMBER:

MEMBER will honor the terms of its CESA and promptly pay or promptly dispute invoices from its REP. MEMBER will comply with the confidentiality and non-disclosure obligations contained in its CESA and Section 7 of this AGREEMENT. MEMBER will designate one or more individuals to receive notices and updates from TCAP and will promptly update contact information. MEMBER will pay aggregation fees to support the non-profit functions of TCAP assessed annually by the TCAP Board of Directors and recovered as part of the energy charges paid to REP. Also, MEMBER will pay or receive refunds equal to the Quarterly Adjustment and the Annual Adjustment mutually agreed upon by TCAP and the Energy Manager to address certain variable costs and charges. including costs imposed by ERCOT, such payment or receipt of funds subject to the reserve account as further described herein. TCAP members will fund, and TCAP will maintain and administer, a reserve account to facilitate the reconciliation of any Quarterly Adjustments or Annual Adjustments by collecting any excess amounts paid and/or paying any deficient amounts incurred (as possible). The reserve account balance will be maintained at a minimum level to cover anticipated future needs for up to two (2) years. The TCAP Board may vote to refund to members amounts in excess of future anticipated needs. Any monies remaining in the reserve account at the dissolution of TCAP will be refunded to current membership at the time of dissolution. TCAP is owned and controlled by its members and is governed by a Board of Directors consisting of employees or elected officials of members. Consistent with TCAP's Bylaws, each MEMBER has a right to nominate its representative to serve on the Board of Directors and has a right to vote in annual elections of Board members. MEMBER has a right to attend or monitor each Board meeting. TCAP has a financial audit performed each year and MEMBER has a right to a copy of the annual audit upon request.

SECTION 5 TCAP SERVICES TO MEMBER:

A. Procurement of Energy Supplies and REP Services

1. TCAP Procurement Services and Capabilities

TCAP will assist prospective members in reviewing market conditions and in estimating the most price opportune time to contract for energy supplies. TCAP will work with MEMBER to achieve a competitive price that balances supply security and risk tolerance while maintaining superior billing and customer services. As a political subdivision corporation, offering electricity procurement to political subdivisions, TCAP has the ability to procure wholesale energy supplies and REP services separately to secure the most effective combination of competitively priced energy supplies and superior billing and customer services. TCAP may utilize either wholesale or retail sources of power, or some combination of both. TCAP may utilize multiple suppliers with different generation resources. TCAP will solicit bids from multiple sources for energy supplies. TCAP aggregates the load of all members to maximize clout in negotiating contract terms. TCAP's objective in negotiations with suppliers is to continue obtaining favorable terms

regarding band widths for annual usage based on total load of all members (rather than based on MEMBER's individual load) and to minimize fees for adding or deleting accounts. TCAP will monitor the wholesale and retail markets for favorable hedging opportunities. TCAP will also monitor, evaluate and issue requests for proposals for power development opportunities beneficial to its MEMBERS, including renewable projects (each, a "Power Project").

2. MEMBER Procurement Options

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

B. Customer and Billing Services Provided by TCAP

1. REP Portal

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

2. REP Customer Service

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

TCAP will review customer billings and make MEMBER aware of inactive accounts that MEMBER may be able to disconnect to save monthly charges.

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

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

4. Information Services

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

5. Demand Response, Distributed Generation and Cost Savings Strategy

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

6. Regulatory and Legislative Representation

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

7. Strategic Hedging

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

SECTION 6 MEMBER RIGHT OF TERMINATION: A. Fixed-Term, Fixed-Price Contract

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

B. Strategic Hedging Program

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

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

C. Participation in Power Projects

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

SECTION 7 CONFIDENTIALITY:

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

SECTION 8 PARAGRAPH HEADINGS:

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

SECTION 9 COUNTERPARTS:

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

SECTION 10 DEFINITIONS:

- "Annual Adjustment" shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to Power Project settlements, if applicable. For those MEMBERS that participate in SHP, the Annual Adjustment shall also include (i) adjustments related to the loss factor for each specific ERCOT zone and (ii) adjustments related to load reconciliation as determined by TCAP, the Energy Manager and the REP.
- "Energy Manager" means the wholesale market participant selected by TCAP to conduct SHP procurements at TCAP's direction, in accordance with Section 5A and Section 7 of this Agreement. The Energy Manager may sell all or a portion of the required wholesale energy to TCAP or TCAP's REP.
- "Power Project" means a power generation project identified by TCAP to supply electric energy to one or more TCAP Members.
- "Project Addendum" means the Addendum for a Power Project, if any, signed and attached as an Exhibit to MEMBER'S CESA.
- "QSE Services Fee" means the QSE Services Fee in affect during the Delivery Term, as agreed between TCAP and Energy Manager.
- "Quarterly Adjustment" shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to (i) ERCOT zonal congestion charges and (ii) ancillary services charges and other charges imposed by governmental agencies or ERCOT upon wholesale suppliers or REPs under statutes, regulations or courts for services within ERCOT zones. Said charges or refunds will be proportional to MEMBER's relative contribution to TCAP load within specific ERCOT zones.
- "Retail Electric Provider" or "REP" means the Retail Electric Provider that is party to (i) the REP Services Agreement with TCAP and (ii) the CESA between itself and MEMBER for the provision of retail electric service.
- "Strategic Hedging Program" or "SHP" means an energy procurement strategy approved by TCAP's Board of Directors, overseen by TCAP's designated consultants, and administered by TCAP's appointed Energy Manager, whereby wholesale energy is solicited and procured at agreed upon intervals, as directed by TCAP.

EXECUTED on this the <u>28th</u> day of <u>July</u>, 20<u>20</u>.

MEMBER:		
Ву:		
Printed Name:		
Title:		
TCAP:		
Ву:		
Printed Name:		
Title:		

COMMERCIAL ELECTRICITY SERVICE AGREEMENT

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

SECTION 1: RETAIL ELECTRIC SALES AND SERVICES

- 1.1 Appointment and Scope. Customer appoints Gexa as its Retail Electric Provider ("REP") for the ESI ID(s) served under this Agreement. Customer authorizes Gexa to: (i) act as Customer's REP for all purposes; and (ii) provide the services required of a REP including, without limitation, the procurement, scheduling and delivery of electricity throughout the Term to each of the ESI ID(s) in accordance with the terms set forth in this Agreement, including the Terms and Conditions of Service set forth in Attachment A. Customer's appointment imposes no other duties on Gexa other than those specified in this Agreement and the REP Services Agreement.
- 1.2 Agreement to Purchase. Customer shall purchase its electricity requirements from Gexa throughout the Term for each of the ESI ID(s) except as otherwise provided. The electricity and services Customer receives from Gexa is for Customer's exclusive proprietary use. Customer alone shall pay for electricity and services provided and for electricity and services Customer fails to take pursuant to its contractual obligations. If Gexa fails to deliver sufficient quantities of electricity to the TDSP for delivery to Customer or fails to schedule the delivery of sufficient quantities of electricity (collectively, a "Scheduling Failure") the TDSP is obligated by law and by its tariff to deliver sufficient electricity to satisfy Customer's needs. If a Scheduling Failure occurs, Gexa shall financially settle, at no additional cost or expense to Customer, with its Qualified Scheduling Entity (as defined by ERCOT) for the purchase of electricity necessary to cover the Scheduling Failure.
- 1.3 Membership in TCAP. Customer is a current member of the Texas Coalition for Affordable Power, Inc. ("TCAP"), and has entered into the Professional Services Agreement (the "PSA") authorizing the purchase of wholesale energy on behalf of the Customer by TCAP and/or TCAP's Energy Manager. Such wholesale energy purchases will affect the calculation of the Energy Price throughout the Term of this Agreement as described in Section 2. If, at any time during the Term, Customer elects to participate in a Power Purchase Agreement with a project to be developed for TCAP's members, and executes the Project Addendum for such project, then the Project Addendum will be attached hereto as Schedule I. Notwithstanding Customer's TCAP membership status, Customer agrees to fulfill all of its obligations under this Agreement, the PSA and, if applicable, the Project Addendum throughout the Term of this Agreement.

1.4 Term.

- (a) Effective Date and Termination Date. Gexa shall provide retail electric service under this Agreement to each ESI ID beginning on the Effective Date and Terminating on the Termination Date, as further defined in this Section 1.4(a) (such period, the "Term"). The Effective Date will occur either (i) on the date occurring on or after the Expected Start Date stated in Attachment B on which each such ESI ID is enrolled with Gexa's service for any new customer, or (ii) if Customer is an existing customer then the Expected Start Date is the meter read date following the expiration of the Customer's prior Agreement with Gexa. Gexa shall continue to provide retail electric service to each ESI ID unless or until the Customer gives notice to TCAP and Gexa of its intent to terminate its membership with TCAP ("Termination Notice"). The Termination Date will occur on each respective ESI ID meter read date during the last month of the calendar year for which electricity has been purchased on Customer's behalf by either TCAP or the Energy Manager in accordance with the PSA prior to the Termination Notice, except that in no event will the Term exceed beyond December 31, 2037. For avoidance of doubt, the Termination Date for each respective ESI ID shall be the sooner to occur of (i) the meter read date occurring in the last month of the calendar year for which electricity has been purchased by either TCAP or the Energy Manager on behalf of the Customer prior to the Termination Notice or (ii) the meter read date occurring in December 2037. As a result of variations in the timing of the Effective Date described in this Section 1.3 the Term may include a partial calendar month in addition to the number of months set forth in Attachment B, if any.
- (b) Delayed Effective Date. Gexa shall use commercially reasonable efforts to cause the Effective Date for each ESI ID to occur on the Expected Start Date. If the Effective Date for an ESI ID occurs more than 20 days after the Expected Start Date, Customer may provide Gexa with evidence of the amount of electricity purchased by Customer from its current REP in connection with that ESI ID during the period on and after the 21st day after the Expected Start Date until the Effective Date (the "Delayed Effective Date Period"), and the total amount paid by Customer to its current REP for the electricity it purchased during the Delayed Effective Date Period (the "Delayed Effective Date Electricity Amount"). Upon receipt of evidence from Customer Gexa shall calculate and provide Customer a credit against future purchases under this Agreement equal to the positive amount resulting from the following calculation: (a) the Delayed Effective Date Electricity Amount minus (b) the amount that Customer would have paid to Gexa pursuant to this

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

- (c) Service After Term. If, for any reason, service continues beyond the Term, it will be on a month-to-month basis, and the Agreement will continue in effect for the ESI ID(s) except that the Energy Price will be the greater of: (i) the Energy Price as set forth in Section 2.1 below, or (ii) the aggregate weighted average of the Market Rate (as defined herein) as determined for all of the ESI ID(s), for as long as service continues. If Customer has not switched from Gexa to another supplier at the expiration of the Term, Gexa shall serve Customer at the rate set forth in this Section for a minimum of 60 days. After those 60 days, Gexa may continue to serve Customer or terminate the Agreement and disconnect Customer.
- 1.5 Modifications to ESI IDs. Gexa shall work with Customer in good faith during the Term to reasonably accommodate and assist Customer with the management of its electricity needs. If at any time during the Term, Customer wants to i) add or delete one or more ESI IDs, ii) otherwise modify the ESI ID information as a result of a decision by Customer to open, close or sell a facility owned or leased by Customer, iii) expand an existing facility, or iv) increase an existing facility's metered load, then Customer shall provide written notice to Gexa of such change ("ESI ID Change Notice"). If such change to the ESI ID is expected to occur prior to the first month of any calendar year for which the Energy Price has been established as of the date of the ESI ID Change Notice, in accordance with Section 2.1 (a) of this Agreement, such notice shall include Customer's election of the "Special Load Threshold," as defined below, which will apply to such change in load. If, in Gexa's reasonable judgment, i) the addition is a separately metered load which does not exceed the applicable Special Load Threshold; or ii) does not result in a net increase in excess of the applicable Special Load Threshold for an existing facility, Gexa shall use commercially reasonable efforts to promptly implement such changes, including providing required notices to ERCOT. If the addition is a separately metered load which exceeds the applicable Special Load Threshold, or results in a net increase in excess of the applicable Special Load Threshold after consideration of any contemporaneous offsetting load decreases, Gexa shall provide service to that ESI ID and shall determine any incremental charge or credit to provide service to any changed ESI IDs. Gexa shall apply such charge or credit to the affected ESI IDs, after such charges have been reviewed by TCAP. "Special Load Threshold" shall mean additional peak demand that is reasonably expected during the first twelve months following commercial operations to exceed, at Customer's election, either (i) 0.25 MW at any time or an annual average load of 0.125 MW or (ii) 1.0 MW at any time or an annual average load of 0.5 MW. Gexa shall make periodic reports regarding changes to the billing status of any ESI ID(s) available to Customer and TCAP. Amendments that add or remove ESI ID(s) as a result of changes made pursuant to this section are incorporated into this Agreement, and are effective on the Effective Date for each ESI ID(s) added to this Agreement or the date that retail electric service for any removed ESI ID(s) ceases or is transferred to another REP.

SECTION 2: RETAIL ELECTRIC ENERGY SERVICE CHARGES

2.1 Energy Price.

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

2.2 Energy Price Adjustments.

- (a) Energy Manager shall have the right to reconcile the revenues received from the Customer with Energy Manager's Supplier Cost on (i) a quarterly basis, by determining the Quarterly Adjustment in the manner specified in the PSA and (ii) on an annual basis, by determining the Annual Adjustment in the manner specified in the PSA. The Quarterly Adjustment and Annual Adjustment may be either a charge or a credit, and shall be collected from or remitted to Customer, as appropriate, in the manner specified in the PSA.
- (b) TCAP and Energy Manager may mutually agree to fix certain component charges comprising Customer's Energy Price for a given Calendar Year, if TCAP determines that fixing these charges is likely to benefit Customer. Charges that are fixed by TCAP and Energy Manager for a given Calendar Year shall not be included in the calculation of either the Quarterly Adjustment or the Annual Adjustment for such Calendar Year, in accordance with the PSA.
- 2.3 Additional Pass-Through Charges. Gexa shall pass through and identify separately on Customer's bill with no mark-up Delivery Charges, Non-Recurring Charges, or Taxes that are not included in the Energy Price(s). All charges are exclusive of Taxes. Pass-Through charges may include charges related to amounts owed to Gexa and/or Wholesale Supplier in accordance with Section 1.3.
- 2.4 Tax Exempt Status. Customer shall provide Gexa with all required exemption certificates if Customer is exempt from paying any Taxes. Gexa shall not recognize an exemption without the exemption certificates and shall not be required to refund or credit previously paid Taxes unless the taxing entity sends the refund to Gexa. Gexa shall, however, assign to Customer any applicable claims for refund.

SECTION 3: BILLING AND PAYMENT

- 3.1 Billing and Payment. Gexa shall invoice Customer's accounts on a monthly basis and shall bill Customer on a consolidated basis for all ESI IDs upon Customer's request. Gexa shall provide a summary bill for all accounts and detailed information for each account. Customer shall remit payment within 30 days of receiving the invoice. Gexa shall base the invoice amount on actual data provided by ERCOT and the TDSP. If ERCOT or the TDSP does not provide actual data in a timely manner, Gexa shall use estimated data to calculate the invoice and, upon receipt of actual data, reconcile the charges and adjust them as needed in subsequent invoices.
- **3.2 Project Settlement Agent Services.** Gexa shall remit the total Project Settlement to the Project on a monthly basis, in accordance with the REP Services Agreement.
- 3.3 Late Penalties, Interest on Overdue Payments, Invoice Disputes. If Customer fails to remit all undisputed amounts on or before the due date, interest will accrue on any due and unpaid amounts from the due date at a rate of one percent per month, or the highest rate permitted by law, whichever is less. If Customer disputes a portion of an invoice it shall provide Gexa a written explanation specifying the amount in dispute and the reason for the dispute within 20 days of the invoice date. If Customer does not provide timely notice, Customer shall owe all amounts by the due date. Notwithstanding the above, if Customer notifies Gexa of a disputed invoice, regardless of whether Customer has already paid the invoice, Gexa shall make records in its possession that are reasonably necessary for Customer to determine the accuracy of the invoice available to Customer during normal business hours; provided, however that neither party may request an adjustment or correction of an invoice unless written notice of such dispute is given within twelve months after the due date of such invoice; provided further, that such twelve month limit does not apply in the case of TDSP meter tampering charges first billed to Gexa that prevent Gexa from reasonably adjusting invoices prior to the twelve month period. In all cases, Gexa and Customer shall use good faith efforts to resolve disputes. In the event the Parties are unable to resolve a dispute within ten days of the notice date, either Party may begin legal proceedings to seek resolution. Any amounts determined owed shall be paid within three days after a decision.
- 3.4 Aggregator Fees. Pursuant to the REP Services Agreement between Gexa and TCAP, Gexa is obligated to pay TCAP an amount determined by multiplying a TCAP Aggregation Fee by the volume consumed in association with the ESI IDs (the "Aggregator Fee"). Customer shall pay the Aggregator Fee. The initial TCAP Aggregation Fee is \$0.001 per kWh, however, it may be changed by the TCAP Board of Directors at any time. Gexa shall state the Aggregator Fee as a separate line item on the Customer's bill.
- 3.5 Billing Guarantee. Gexa shall issue an invoice based on actual or estimated usage to Customer for every ESI ID at least one time per month. If, for reasons other than Force Majeure, Gexa fails to invoice an ESI ID within 120 days of any scheduled meter read, Gexa irrevocably waives its right to invoice Customer for any energy consumed at that ESI ID for the meter read cycle that should have been invoiced, unless not less than 10 days prior to the expiration of such 120 day period, Gexa provides Customer with a written explanation of the circumstances that prevent Gexa from issuing that invoice and the expected time by which an invoice can be issued. In such event, Customer and Gexa shall determine a reasonable extension period, not to exceed 30 days, within which an invoice will be issued. Gexa shall adjust or true-up each invoice no more than twice and Gexa shall issue such adjustments within 210 days of the initial issue date. Notwithstanding the foregoing, Gexa may issue an invoice or partial invoice arising from meter tampering charges without limitation and within a reasonable time after first billed to Gexa by the TDSP.

SECTION 4: CUSTOMER INFORMATION, CREDIT AND DEPOSITS

4.1 Customer Information. By entering into this Agreement and appointing Gexa as Customer's agent for electricity service, Customer authorizes Gexa to obtain certain information that Gexa may need to provide Customer's

electric service, including Customer's address, telephone number, account numbers, historical usage information, and historical payment information from Customer's TDSP, and Customer further authorizes its TDSP to release that information to Gexa.

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

SECTION 5: EARLY TERMINATION; DAMAGES

- **5.1 Cancellation by Customer for Insufficient Appropriations.** If, during Customer's annual appropriations determination, the applicable governmental authorities do not allocate sufficient funds to allow Customer to continue to perform its obligations under this Agreement (an "Appropriations Failure"), then Customer or Gexa shall have the right to terminate this Agreement in full or as to any affected ESI ID upon 30 days advance written notice effective at the end of the period for which appropriations are made; provided, that if appropriations are subsequently allocated for electricity for the ESI IDs covered by this Agreement, then the termination may be revoked at Gexa's option and those appropriations shall continue to apply to this Agreement and shall not be used for an electricity supply agreement with another REP. Upon a termination of this Agreement for Appropriations Failure, in full or as to any ESI ID(s), Customer shall pay all amounts due Gexa under this Agreement, including the Customer Early Termination Damages.
- Customer Early Termination Damages. Except in connection with the closure of a facility associated with an ESI ID pursuant to Section 1.4, in connection with a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Customer cancels this Agreement before the end of the Term and refuses to accept electric supply delivery from Gexa for any ESI ID(s), Gexa may charge Customer early termination damages equal to the sum of (a) the Retail Termination Payment, (b) the QSE Services Termination Payment, (c) the Quarterly and Annual Adjustment Payment, and (d) the Wholesale Transaction Termination Payment, as each of these terms are defined below (the sum total of these, the "Customer Early Termination Damages"). The "Retail Termination Payment" shall equal the product of (a) the Expected Usage for each ESI ID subject to Customer's cancelation or refusal of electric supply delivery ("Customer Terminated Usage") multiplied by (b) the sum of (i) the Aggregator Fee and (ii) the REP Services Fee specified in the REP Services Agreement. The "QSE Services Termination Payment" shall equal the product of (a) the Customer Terminated Usage grossed up for losses multiplied by (b) the QSE Services Fee, as defined in the PSA. The "Quarterly and Annual Adjustment Payment" shall be calculated by the Energy Manager in accordance with the PSA, and shall include any Quarterly and Annual Adjustment amounts for electricity provided to the Customer under this Agreement prior to the termination of this Agreement, which have not yet been charged or credited to Customer, as appropriate. For avoidance of doubt, the Quarterly and Annual Adjustment Payment may be either a charge or a credit to Customer, as calculated in accordance with the PSA. If the Customer Early Termination Damages are charged due to an Event of Default by Customer, then the Customer Early Termination Damages will also include Gexa's reasonable costs relating to the determination and collection of Customer Early Termination Damages, including attorney and consultant fees incurred. The provisions in Section 3 related to Billing and Payment apply to the billing, due date, and collection of Customer Early Termination Damages. Customer agrees that Customer Early Termination Damages are a reasonable estimate of the damages due Gexa for failure to accept electric supply, and are not punitive in nature.
- 5.3 Termination for Wholesale Supply Failure. If, during the Term, the Wholesale Transactions are terminated as a result of a default by the Energy Manager ("Wholesale Supply Failure"), then this Agreement will also terminate effective on the date the Wholesale Agreement terminates. In the event of a termination for Wholesale Supply Failure, Gexa shall pay Customer a Wholesale Termination Payment if required by Section 5.5.
- 5.4 Gexa Early Termination Damages. Except for a Wholesale Supply Failure, a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Gexa cancels this Agreement and refuses to provide electric supply delivery to Customer for any or all ESI ID(s), Customer shall have the right to charge Gexa an early termination penalty equal to the amount determined as follows: the product of (i) the Expected Usage for each ESI ID subject to Gexa's cancellation or refusal of electric supply delivery ("Gexa Terminated Usage") multiplied by (ii) the REP Services Fee specified in the REP Services Agreement (that result the "Gexa Early Termination Damages"). If the Gexa Early Termination Damages are charged due to an Event of Default by Gexa, then the Gexa Early Termination Damages will also include Customer's reasonable costs relating to the determination and collection of Gexa Early Termination

Damages, including attorney and consultant fees incurred. Gexa agrees the Gexa Early Termination Damages are a reasonable estimate of the damages due Customer for failure to deliver electric supply, and are not punitive in nature.

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

SECTION 6: NOTICES AND PAYMENT

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

- a. If to Customer (type customer address below):
 Benjamin L. White
 City Manager
 205 S. Main Street
 Farmersville, TX 75442
- b. If to Gexa; Gexa Energy, LP 20455 State Highway 249, Suite 200 Houston, Texas 77070
- **6.2 Payments.** The Parties shall send payments to the addresses below or any other address one Party provides to the other in writing:
 - a. If to Customer (type customer address below):
 City of Farmersville
 205 S. Main Street
 Farmersville, TX 75442
 - b. If to Gexa:

Gexa Energy, LP 20455 State Highway 249, Suite 200 Houston, Texas 77070

SECTION 7: DEFINITIONS

- **7.1 Definitions.** In addition to terms defined elsewhere in this Agreement, when used with initial capitalization, whether singular or plural, capitalized terms have the meanings set forth in this Section 7.1. All other capitalized terms not otherwise defined shall have the meanings given them in the following documents, with any conflicting definitions contained in those documents applied in the following order: PURA, the PUCT Substantive Rules, and the ERCOT Protocols.
- 1. "Actual Usage" means the actual amount of electric energy (in kWh) used at the ESI ID(s) as determined by the TDSP.
- 2. "Delivery Charges" means those charges or credits from the TDSP pursuant to its tariff, including, but not limited to: Transmission and Distribution Charges, System Benefit Fund Charge, Nuclear Decommissioning Charge, Competitive Transition Charge, Standard Customer Metering Charge, Customer Charge, Merger Savings and Rate Reduction Credit, Excess Mitigation Credit and Utility Imposed Reactive Power Charges.
- 3. "EEI Master Agreement" mean an EEI Master Agreement between Gexa and the Energy Manager governing the Wholesale Transactions entered into by the Energy Manager in accordance with Section 2.1 and transferred by the Energy Manager to Gexa.
- 4. "Effective Date" means the date of the first meter reading of an ESI ID provided to Gexa by the TDSP after the TDSP and ERCOT shall have timely performed any required enrollment and cancellation procedures necessary to switch Customer's REP to such ESI ID to Gexa.
- 5. "Electricity Related Charges" means, unless noted otherwise: Ancillary Services Charge, Congestion, ERCOT Administrative Fee, Delivery Loss Charge, Transmission Loss Charge, Renewable Energy Credit Charge, Residential Energy Credit Charge, Unaccounted For Energy Charge, Qualified Scheduling Entity Charge, Imbalance Settlement Charge.
- 6. **Energy Manager**" means the wholesale market participant designated by TCAP to perform the services described in the PSA.
- 7. "Energy Price(s)" means the rates per unit of measure specified in Section 2.1 and includes all Electricity Related Charges.
 - "ERCOT" means the Electric Reliability Council of Texas.
- 9. "ERCOT Protocols" means the document adopted, published, and amended from time to time by ERCOT, and initially approved by the PUCT, to govern electric transactions in the ERCOT Region, including any attachments or exhibits referenced in the document, that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT, or any successor document thereto.
- 10. "ESI ID(s)" means the Electric Service Identifiers for the property service addresses identified on <u>Attachment B</u> to this Agreement or if Customer is an existing Gexa customer then the list of service addresses currently served by Gexa, as such list may be modified from time to time as provided in Section 1.4.
- 11. "Expected Usage" means either the amount stated in Attachment B calculated for the remaining Term, or if no amounts are stated or Customer is an existing Gexa customer then the average actual monthly Customer energy usage from the comparable month from the previous year (or if an average cannot be computed due to limited service by Gexa or other circumstances, an average monthly usage as is reasonably determined by Gexa) times the number of months remaining in the Term as outlined in Section 1.4.
 - 12. "kWh" means kilowatt hour.
- 13. "LMP" or "Locational Marginal Price" means the price calculated for the applicable trading hub pursuant to the ERCOT Protocols.
- 14. "Market Rate" means 135% of the load-weighted average of the hourly LMPs at the corresponding load zone, as determined for any delivery period.
- 15. "Nodal Market" means the implementation of wholesale market design by ERCOT with locational marginal pricing for resources.

- 16. "Nodal Congestion" means the positive difference in price between the real-time settlement point price as determined by ERCOT for the trading hub and the real-time settlement point price as determined by ERCOT for the load zone associated with the customer Facilities.
- 17. "Non-Recurring Charges" means any charges imposed by the TDSP or other third parties on a non-recurring basis for services, repairs or additional equipment needed for Customer's electric service.
 - 18. "PUCT" means Public Utility Commission of Texas.
- 19. "Project Settlement Payment" means the Project Settlement Payment as defined in the Project Addendum, attached as Schedule I to this Agreement.
- 20. "QSE Services Fee" means the fee owed from Customer to Gexa, and remitted from Gexa to Energy Manager, for QSE Services performed by Energy Manager for the Term, as mutually agreed between TCAP and Energy Manager, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The QSE Services Fee shall be included in the Energy Price for the Term.
- 21. "REP Services Agreement" means the REP Services Agreement currently in effect during the Term, as amended from time to time, between Gexa and TCAP.
- 22. "REP Services Fee" means the fee owed from Customer to Gexa, for REP services rendered during the Term, as mutually agreed between TCAP and Gexa, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The REP Services Fee shall be included in the Energy Price for the Term.
- 23. "Taxes" means all taxes, assessments, levies, duties, charges, fees and withholdings of any kind levied by a duly-constituted taxing authority and all penalties, fines, and additions to tax, and interest thereon that are directly related to the services provided under this Agreement, but does not include the System Benefit Fund fee and fees and charges imposed by ERCOT. By way of example only, Taxes includes: Sales Tax, Miscellaneous Gross Receipts Tax, PUCT Assessment Fees and Franchise Fees.
- 24. 'TCAP" means Texas Coalition for Affordable Power, an aggregation pool of governmental and other entities organized and administered by TCAP of which Customer is a member for the ESI IDs.
- 25. "TDSP" or "Transmission and Distribution Service Provider" means an entity regulated by the State of Texas, which transmits or distributes electric energy.

Attachments:

Attachment A

Attachment B (for new TCAP Customers only)

Terms and Conditions of Service
Offer Sheet (ESI ID list and Expected Start Date)

CUSTOMER (type Customer name in field below): City of Farmersville 205 S. Main Street Farmersville, TX 75442	GEXA: Gexa Energy, LP, By its General Partner Gexa Energy GP, LLC
By:	By:
Printed:	Printed
Title:	Title:
Date	Date:

Terms and Conditions of Service Attachment A

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

A. REPRESENTATIONS AND WARRANTIES

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

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

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

B. DISCLAIMERS OF WARRANTIES; LIMITATION OF LIABILITIES

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

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

B.3 WAIVER OF CUSTOMER PROTECTION RULES AND CONSUMER RIGHTS. THE PARTIES FURTHER ACKNOWLEDGE THAT THE CUSTOMER PROTECTION RULES ADOPTED BY THE PUBLIC UTILITY COMMISSION (AS CONTAINED IN ITS SUBSTANTIVE RULES 25.471 ET SEQ.) ("CUSTOMER PROTECTION RULES") THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES DO NOT APPLY TO THIS AGREEMENT. EXCEPT AS SET FORTH IN THIS SECTION, CUSTOMER EXPRESSLY WAIVES THE CUSTOMER PROTECTION RULES THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW. CUSTOMER FURTHER WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES--CONSUMER PROTECTION ACT, SECTION 17.41, ET. SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS

SPECIAL RIGHTS AND PROTECTIONS. CUSTOMER REPRESENTS AND WARRANTS TO GEXA THAT: (a) CUSTOMER IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION IN RELATION TO GEXA; (b) CUSTOMER IS REPRESENTED BY LEGAL COUNSEL THAT WAS NEITHER DIRECTLY NOR INDIRECTLY IDENTIFIED, SUGGESTED OR SELECTED BY GEXA; AND (c) CUSTOMER VOLUNTARILY CONSENTS TO THIS WAIVER AFTER CONSULTATION WITH ITS LEGAL COUNSEL.

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

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

C. CONFIDENTIALITY AGREEMENT

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

D. DEFAULT AND REMEDIES

D.1 Events of Default. An event of default ("Event of Default") means: (a) the failure of Customer to make, when due, any payment required under this Agreement for any undisputed amount if that payment is not made within fifteen (15) business days after receipt of written notice (facsimile or electronic mail are valid forms of notice for this paragraph) from Gexa; or (b) any representation or warranty made by a Party proves to be false or misleading in any material respect; (c) except as provided in clause (a) above or otherwise in this section D.1, the failure of any Party to perform its obligations under this Agreement and that failure is not excused by Force Majeure and remains uncured following 20 business days written notice of the failure; (d) the defaulting Party (i) makes an assignment or any general arrangement for the benefit of creditors; or (ii) files a petition or otherwise commences, authorizes or acquiesces to a bankruptcy proceeding or similar proceeding for the protection of creditors, or has such a petition filed against it and that petition is not withdrawn or dismissed within 20 business days after filing; or (iii) otherwise becomes insolvent; or (iv) is unable to pay its debts when due; or (v) fails to establish, maintain or extend Credit in form and in an amount acceptable to Gexa when required; or (e) the Wholesate Transaction is terminated due to a default by Gexa under CESAs with other TCAP members or due to a default by the Energy Manager under the

Wholesale Transaction. If an Event of Default listed in subsection (d) of this Section occurs, it is deemed to have automatically occurred prior to such event.

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

E. MISCELLANEOUS PROVISIONS

- **E.1 Disclaimer.** This Agreement does not constitute, create, or otherwise recognize the existence of a joint venture, association, partnership, or other formal business entity of any kind among the Parties and the rights and obligations of the Parties are limited to those set forth in this Agreement.
- **E.2** Headings. The descriptive headings of the Articles and Sections of this Agreement are inserted for convenience only and are not intended to affect the meaning, interpretation or construction of this Agreement.
- **E.3 Walver.** Except as otherwise provided, failure of a Party to comply with an obligation, covenant, agreement, or condition may be waived by the other Party only in a writing signed by the Party granting the waiver, but that waiver does not constitute a waiver of, or estoppel with respect to a subsequent failure of the first Party to comply with that obligation, covenant, agreement, or condition.
- **E.4 Assignment.** Except as provided in the REP Services Agreement, Customer shall not assign this Agreement, in whole or in part, or any of its rights or obligations purusant to the Agreement without Gexa's prior written consent, which shall not be unreasonably withheld. Gexa may withold consent if a proposed assignee fails to be at least as creditworthy as Customer as of the Effective Date. Gexa may: (a) transfer, sell, pledge, encumber or assign the revenues or proceeds of this Agreement in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to a Gexa affiliate with operating capability and financial condition substantially similar to Gexa; (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Gexa with an operating capability and financial condition substantially similar to Gexa as of the execution date of this Agreement; and/or (d) transfer or assign this Agreement to a certified REP with an operating capability and financial condition substant ially similar to Gexa as of the execution date of this Agreement. In the case of (b), (c), or (d), any such assignee shall agree in writing to be bound by these Terms and Conditions of Service, and upon assignment, Gexa shall have no further obligations under this Agreement. Gexa shall not assign the Agreement to a non-affiliated entity (including its guarantor) that has a credit rating lower than BBB- without the prior written consent of TCAP, which shall not be unreasonably withheld.
- E.5 No Third-Party Beneficiaries. This Agreement does not confer any rights or remedies on any person or party other than the Parties, their successors and permitted assigns; except that the Parties recognize that TCAP is entitled to receive the Aggegator Fee
- **E.6 Severability.** If a provision of this Agreement is held to be unenforceable or invalid by a court or regulatory authority of competent jurisdiction, the validity and enforceability of the remaining provisions are unaffected by that holding, and the Parties shall, to the extent possible, negotiate an equitable adjustment to the provisions of this Agreement in order to preserve the original intent and purpose of this Agreement.
- E.7 Entire Agreement; Amendments. This Agreement constitutes the entire understanding between the Parties, and supersedes any and all previous understandings, oral or written, with respect to the subjects it covers. This Agreement may be amended only upon the mutually signed, written agreement of the Parties.
- **E.8 Further Assurances.** The Parties shall promptly execute and deliver, at the expense of the Party requesting such action, any and all other and further instruments and documents which are reasonably requested in order to effectuate the transactions contemplated in this Agreement.
- **E.9 Emergency, Outage and Wire Service.** In the event of an emergency, outage or service need, Customer shall call the TDSP for the service area of the ESI ID experiencing the emergency, outage or service need.
- **E.10 Customer Care.** Customer may contact Gexa Customer Care if Customer has specific comments, questions, disputes, or complaints toll free at 1-866-961-9399, Monday to Friday 7:00 a.m. 8:00 p.m. CST and Saturday from 8:00 a.m. 2:00 p.m.. Gexa shall assist and cooperate with Customer regarding communications with a TDSP relating to service to any ESI ID served by Gexa under this Agreement.

E.11 Governing Law.

- a. This Agreement is governed by and construed and enforced in accordance with the laws of the State of Texas applicable to contracts made and performed in the State of Texas, without regard to the State of Texas conflict of laws provisions.
- b. All disputes between the Parties under this Agreement which are not otherwise settled will be decided by a court of competent jurisdiction in Harris County, Texas, and the Parties submit to the jurisdiction of the courts of the State of Texas and the Federal District Courts in Houston, Harris County, Texas. All disputes are governed under the laws of the State of Texas.
- c. Subject to the provisions of E.11.a. above, this Agreement is subject to, and in the performance of their respective obligations under this Agreement the Parties shall comply with, all applicable federal, state and local laws, regulations and requirements (including the rules, regulations and requirements of quasigovernmental and regulatory authorities with jurisdiction over the Parties, including ERCOT) (collectively, "Applicable Law").

- **E.12** No Presumption Against Drafting. Both Parties contributed to the drafting of this Agreement. The rule of construction that any ambiguity is construed against the party who drafted this Agreement does not apply to this Agreement.
- E.13 Counterparts; Facsimile Copies. This Agreement may be executed in counterparts, all of which constitute one and the same Agreement and each is deemed an original. A facsimile copy of either Party's signature is considered an original for all purposes, and each Party shall provide its original signature upon request.
- **E.15** Offer for Electric Service; Refusal of Service. This Agreement, including these Terms and Conditions of Service, constitute an offer for electric service, and is expressly conditioned on acceptance of this Agreement by Gexa. Gexa may refuse to provide electric service to Customer subject to the requirements of Applicable Law.



Background.

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

What is SHP?

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

What action needs to be taken and when?

In order to prepare for an electric supply contract beyond the 2022, it is necessary for members to have their governmental bodies pass the enclosed resolution to approve the Professional Services Agreement and the Commercial Electricity Service Agreement. The resolution authorizes TCAP to function as a procurer of energy in addition to serving as an agent in negotiating contracts. While SHP is the default option, members may opt out by filling out the Authorized Election Form attached as Exhibit A of the PSA and have a traditional fixed price/fixed term contract post-2022. However, it is important that members intending to participate in SHP do so by September 30, 2020 in order to be included in the monthly auctions beginning in January 2021.

IX. Budget workshop

X. Requests to be Placed on Future Agendas

