

STATE OF TEXAS ELECTRIC SERVICE CONTRACT

THIS CONTRACT (the "Contract") is made by and between the City of Austin, Texas d/b/a Austin Energy ("Austin Energy"), and the State of Texas acting by and through the Texas Facilities Commission (the "State"), pursuant to the State of Texas Contract Service Rate Schedule enacted by Austin City Ordinance No. 20161208-057 (the "STCS Schedule").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the State and Austin Energy agree as follows:

1. Term

This Contract shall remain in effect from June 1, 2017 ("Effective Date") through the State's billing month that includes August 31, 2026 ("the Term"), unless otherwise terminated sooner in accordance with the terms of the STCS Schedule or this Contract. The initial contract period shall be in effect from the Effective Date through the State's billing month that includes August 31, 2021 ("Initial Contract Period").

2. Eligibility for Service under STCS Schedule

All State accounts meeting the qualifications for service under the Large Service Contract Rate Schedule contained in City Ordinance No. 20160829-004 on May 31, 2017 (a "Qualifying Account") shall receive electric service under the STCS Schedule rate during the Term. Additionally, any other State facility that subsequently qualifies for service under the STCS Schedule shall be deemed a Qualifying Account for the remainder of the Term and receive service under the STCS Schedule beginning on the first day of the billing cycle following qualification. The eligibility of any State account as a Qualifying Account shall not be adversely affected by any relocation, rerouting or reconfiguration of a metered service resulting from a State project if the account otherwise meets the qualifications for the service under the STCS Schedule.

3. Electric Service

3.1 Exclusivity. The State agrees to purchase its entire bundled electric service requirements from all State facilities in Austin Energy's service territory, including but not limited to Qualifying Accounts, and to pay Austin Energy for electric service in accordance with (1) the STCS Schedule for Qualifying Accounts and (2) other applicable rate schedules as may be enacted from time to time for other State accounts.

The State, however, may: (1) generate, in total, up to one megawatt of its requirements from State-owned, on-site "renewable energy technology" as defined in and subject to the City of Austin Non-Residential Distributed Generation from Renewable Sources Rider; and (2) establish on-site back-up generation for periodic testing and

during periods when Electric Service from Austin Energy is unavailable; and to the extent necessary, supplement, but not displace, Austin Energy electric service during such periods of time, if ever, when Austin Energy electric service is of insufficient quantity to allow the State to conduct its business.

**3.2 Applicable Rates.** Except as set forth in Paragraphs 3.3 and 4, the basic, energy, demand, power supply adjustment, applicable community benefit charges, and regulatory charges during the Initial Contract Period will be those adopted by the Austin City Council (“Council”) in City Ordinance No. 20160829-004. After the Initial Contract Period, Council may amend the basic, energy, demand and energy efficiency charges. These amended charges will be fixed for the period September 1, 2021 through August 31, 2023, and again for the period September 1, 2023 through August 31, 2026.

If during the Initial Contract Period, as a result of a comprehensive cost-of-service study, Council adopts new base electric rates which would apply to an account covered by this Contract, the State may opt to have its base rates adjusted to the applicable new rates.

The regulatory charge will remain fixed for the Initial Contract Period. For each subsequent period, the regulatory charge will be reset and fixed in accordance with the then-applicable regulatory charge schedule, plus an adjustment for any over- or under-recovery of regulatory charges from the previous period. The regulatory charge may be adjusted during any contract period if an over-recovery of more than 110 percent or an under-recovery of less than 90 percent of costs occurs.

All State accounts that do not qualify for service under the STCS Schedule shall be governed by otherwise applicable rate schedules.

Nothing in this Contract is intended, or shall be deemed, to dedicate Austin Energy’s electric utility system, or any portion thereof, to the State. Austin Energy will continue to waive any late payment interest for all State accounts, and the State will make reasonable efforts to make timely payment of City utility bills. In the event any State account is billed incorrectly, Austin Energy shall retroactively adjust the affected State account during the next billing cycle or as soon as practicable.

**3.3 Community Benefit Charges and Energy Efficiency Services.** During the Term, the Customer Assistance Program and Service Area Lighting charges shall not apply.

The Energy Efficiency Services portion of the Community Benefit Charge shall apply and the State shall be eligible to participate in Austin Energy’s energy efficiency and distributed energy resource incentive programs. Any available incentive may be, at

the State's election, applied as a bill credit to the monthly bill of the participating State facility.

Austin Energy shall make available a full-time equivalent position, either an employee or contractor, to provide technical assistance for all State accounts. This resource will work with the State to identify actionable energy efficiency and distributed energy projects that qualify under Austin Energy incentive programs and to provide assistance in completing any required program application documents and other compliance matters.

During each 12-month period during the Initial Contract Period, Austin Energy will identify opportunities for projects that, if implemented, would result in the State receiving not less than \$300,000 of incentives under Austin Energy incentive programs, for a total of not less than \$1.275 million during the Initial Contract Period (including a prorated amount of \$75,000 for the final four-month period of the Initial Term). The programs identified may benefit any State of Texas account, not only Qualifying Accounts. If in any such 12-month period, Austin Energy fails to identify at least \$300,000 of incentive opportunities for State of Texas accounts (or \$75,000 for the prorated last period), Austin Energy shall pay the State a guaranteed minimum incentive amount, in addition to incentives paid, of up to \$58,000. The size of the minimum incentive for any 12-month period shall be \$58,000 times a fraction, the numerator of which shall be 300,000 minus the amount of incentive opportunities identified, and the denominator shall be 300,000.

3.4 Dual Feed Service. Capacity and maintenance fees for dual feed service shall not apply to a Qualifying Facility; however the State shall be responsible for any applicable installation costs.

4. Block Price Power Supply.

4.1 Fixed Contract Quantity. For periods of no longer than five years during the Term, the State may purchase an amount of its energy requirements for Qualifying Accounts as a Fixed Contract Quantity at a monthly block price based upon market availability for forward purchases (the "Block Price"). For the Fixed Contract Quantity, the State shall be billed the Block Price in lieu of the Power Supply Adjustment charge or Green Choice charge. All other pricing, charges, and fees shall be billed as set forth in the STCS Schedule. The Fixed Contract Quantity, Block Price and related terms shall be separately executed and set forth in a term sheet ("Term Sheet") the form of which is attached to this Agreement as Exhibit A. Upon execution of a Term Sheet by both parties no later than five business days prior to the State's desired start date for the purchase, Austin Energy shall be authorized to purchase the Fixed Contract Quantity for the State on the terms stated in the Term Sheet. Austin Energy's execution of a Term Sheet does not constitute a guarantee that the Fixed Contract Quantity will be available at the price

stated therein, and Austin Energy shall have no liability to the State for failure to execute any forward supply contract. All energy received by Qualifying Accounts in excess or in the absence of a Fixed Contract Quantity shall be billed in accordance with the STCS Schedule.

4.2 Forward Contract / Commodities Exchange Act. The parties agree that this entire Contract, including but not limited to the terms and conditions related to the Fixed Contract Quantity, is a “forward contract” and that Austin Energy is a “forward contract merchant” for purposes of the U.S. Bankruptcy Code, as amended. Further, Austin Energy is not providing advice regarding the value or advisability of trading in “commodity interests” as defined in the Commodity Exchange Act, 7 U.S.C. Sections 1-25 et seq., as amended (the “CEA”), including futures contracts and commodity options or any other trade activity that would cause Austin Energy to be considered a commodity trading advisor under the CEA.

4.3 Take-or-Pay. The State agrees that it will bear the risk of payment of the Block Price for the full Fixed Contract Quantity agreed to be delivered, without any regard to any failure of the State to use the Fixed Contract Quantity. Austin Energy shall use reasonable commercial efforts to mitigate any damages.

4.4 Title. Title to the Fixed Contract Quantity shall pass to the State only upon delivery and may not be resold.

4.5 Termination of Block Price Power Supply by the State. In the event of a Force Majeure event preventing the State from using a significant portion of its Fixed Contract Quantity for a period of more than one month, and provided that Austin Energy is able to fully supply the electric service pursuant to the Fixed Contract Quantity, the State may terminate its obligations to purchase some or all of the Fixed Contract Quantity by making a Termination Payment to Austin Energy.

A Force Majeure event is an event beyond the reasonable control of a party that, despite the exercise of reasonable commercial efforts, the party is unable to overcome or foreseeably prevent, such as fire, explosion, winds, tornado, hurricanes, floods, other natural catastrophes, strike, lockout, demonstrations, casualties, civil or military authority, insurrection or riot, or any other like causes beyond a party’s reasonable control. A Force Majeure event shall not include a change in economic conditions, financial difficulty or inability to pay, bankruptcy or receivership, or a change in electric market or grid conditions.

4.6 Termination Payment. A “Termination Payment” shall be calculated as the negative liquidation value and other costs or losses reasonably incurred by Austin Energy in unwinding the supply contract(s) for the cancelled Fixed Contract Quantity at the time of liquidation, which Austin Energy shall use commercially reasonable efforts to effect

within 15 days of a written request from the State under paragraph 4.5. Austin Energy shall use reasonable commercial efforts to limit the amount of any Termination Payment, but nothing herein shall be construed to limit Austin Energy's ability to unwind a supply contract as provided in this Agreement. If the liquidation value of the supply contract is positive, the realized gain shall be applied as a credit against the State's payment obligations under this Agreement. In no event shall (i) Austin Energy be required to make a payment to the State under this section or (ii) a Termination Payment exceed the full nominal value of the cancelled supply contract(s) over the remaining term(s) thereof.

5. Electric Service shall be provided in accordance with City of Austin Utility Service Regulations (Austin City Code Chapter 15-9), as amended from time to time, except where the application of said Regulations would be inconsistent with the terms of the STCS Schedule, this Contract, or State law or regulations.
6. The State shall be in default hereunder if the State fails to fully, faithfully and timely perform each of its material obligations or covenants under this Contract, including, without limitation, its obligations to timely pay for Electric Service except as otherwise agreed in Paragraph 13. Upon occurrence of a material breach by either the State or Austin Energy, in addition to all other remedies available hereunder or under applicable law or the STCS Schedule, the other party may terminate this Contract upon 30 days' prior written notice, unless within such 30 day period, the breaching party shall have either cured the breach, or demonstrated to the other party's reasonable satisfaction that the breaching party is not or is no longer in breach of this Contract; provided, however such 30 day period shall be extended if the nature of the alleged breach is such that it cannot be cured within 30 days, and breaching party promptly commences to cure upon receipt of notice, and pursues its curative efforts with due diligence and in good faith to completion.
7. No waiver by either party of any one or more defaults in the performance of this Contract by the other shall operate as, or be deemed to be, a permanent waiver of any rights or obligations, or an express or implied acceptance of any other existing or future default, whether of a similar or of a different character; nor shall such waiver constitute either an amendment of the terms of this Contract, or a practice or course of dealing between Austin Energy and the State hereunder contrary to the express terms of this Contract. All rights and remedies under this Contract are cumulative and shall not be deemed exclusive of any other rights or remedies provided by law.
8. This Contract will be binding upon and inure to the benefit of the parties and their respective successors and assigns subject to the following conditions:
  - a. If in the future, Austin Energy functionally unbundles its electric utility into one or more separate entities such as a generation company, transmission company or a distribution company, Austin Energy may, upon written notice to the State, assign

this Contract in whole or in part to one or more of such successor entities as necessary to fulfill the purposes of this Contract.

- b. If, in the future, the State is required by state or federal law to act in a manner inconsistent with the terms of this Contract, then the State may, upon prior written notice to Austin Energy, cancel, or modify in whole or in part, this Contract as necessary to comply with state or federal law.
  - c. Except as provided in Paragraphs 8(a) and (b) above, no assignment of this Contract or any of the rights or obligations hereunder may be made in whole or in part without the prior written consent of the other party, such consent not to be unreasonably withheld.
  - d. No assignment or succession to the interest of either party shall bind the non-assigning party until the non-assigning party receives written notice thereof together with true copies of the documents evidencing such succession or assignment, and such corporate or other documents as may be required to reasonably satisfy the non-assigning party that the proposed assignment or transfer is permitted under this Paragraph 8.
  - e. There are no third party beneficiaries to this Contract, and the provisions of this Contract shall not impart any rights enforceable by any person, firm, corporation or organization not a party hereto or a successor or assign of a party hereto.
  - f. Nothing in this Contract shall be deemed to prohibit, or require Austin Energy's consent to, a sale, lease, or transfer of the State's facilities, or an interest in the State's facilities.
  - g. The State may opt to terminate this Contract if, during the Term, the Austin City Council or other regulatory body adds a schedule that offers more favorable rates, terms, or conditions than provided by the STCS Schedule and that describes a State class for which the State's accounts receiving service under this Contract qualify. The State may exercise this option by providing written notice of its intent to Austin Energy and by executing the written agreement, if any, required to receive service under the new schedule.
9. This Contract is subject to all applicable and valid laws, orders, rules and regulations of any state, federal or other governmental authority or regulatory body having jurisdiction over the parties or the subject matter hereof. Nothing herein will be construed to prevent either party from contesting the applicability or validity of any law, order, rule or regulation, or act as a waiver of a party's right to assert the lack of jurisdiction of such governmental authority or regulatory body. Each party shall reasonably cooperate with

the other to the extent such other party is required to make any report or filing concerning this Contract with such governmental or regulatory body.

10. Any notice or request required by this Contract shall be in writing and be sent by registered or certified United States mail, addressed to the other party at such party's address and to the addressee given below or to such other address or addressee as such party shall from time to time designate in writing for such purpose. All notices shall be effective upon receipt. Routine communications may be sent by first class mail, delivery service, facsimile, e-mail, or other commercially accepted means.

CITY OF AUSTIN:

Austin Energy  
721 Barton Springs Road  
Austin, Texas 78704  
Attn.: Kerri Davis  
Manager, Key Accounts

THE STATE:

Texas Facilities Commission  
1711 San Jacinto Blvd.  
Austin, TX 78701  
Attn: Kay Molina  
General Counsel

11. All disputes which may arise from, out of, under or respecting the terms and conditions of this Contract or concerning the rights or obligations of the parties hereunder, or respecting any performance or failure of performance by either party hereunder, shall be governed by the laws of the State of Texas exclusive of laws which may dictate the application of the law of another state. The parties further agree that venue shall be proper and lie exclusively in the state courts of Travis County, Texas.
12. The invalidity, illegality, or unenforceability of any provision of this Contract shall in no way affect the validity or enforceability of any other portion or provision of this Contract. Any void provision shall be deemed severed from this Contract and the balance of this Contract shall be construed and enforced as if this Contract did not contain the particular portion or provision held to be void. The parties further agree to reform this Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of this Contract be determined to be void. The parties expressly agree that the provisions of Paragraph 5 are of the essence of this contract and are non-severable.
13. This Contract shall not be construed as creating any debt on behalf of the State in violation of Tex. Const. art. III, §49. In compliance with Tex. Const. art. VIII, §6, it is understood that all obligations of the State hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

14. Austin Energy shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Austin Energy shall maintain all such documents and other records relating to this Contract and the State's property for a period of four years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Austin Energy shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Contract. Austin Energy and any subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Austin Energy must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by the Texas Facilities Commission ("TFC") and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

Austin Energy shall cooperate with any authorized agents of the State and shall provide them with prompt access to all of such State's work as requested. The acceptance of funds by Austin Energy or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds. Austin Energy acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Austin Energy shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Austin Energy and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

15. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the parties to attempt to resolve all disputes arising under this Contract.
16. Nothing in this Contract shall be construed as a waiver of sovereign immunity by the State. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State or TFC. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. The State does not waive any privileges, rights,

defenses, or immunities available to the State by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

- 17. This Contract constitutes the entire understanding of the parties relating to the provision of Electric Service, and there shall be no modification or waiver hereof except in writing signed by both parties to this Contract.

Effective as of the date the last party signs:

CITY OF AUSTIN d/b/a Austin Energy

THE STATE OF TEXAS, acting by and through the Texas Facilities Commission

By: Jackie A. Sargent

By: Harvey Hilderbrand

Name: Jackie Sargent

Name: Harvey Hilderbrand

Title: Austin Energy General Manager

Title: Executive Director

Date: 3-17-2017

Date: 3-22-17



