CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY
☐ Consent ☐ Regular ☐ Statutory

Council Meeting Date:	6/28/2016
Department:	Government Relations
Department Head	Brandi Youngkin
Agenda Coordinator (include phone #):	**Corey Isaacs x7134**

CAPTION

A Resolution of the City of Plano, Texas, approving the terms and conditions of a customer electricity supply agreement by and between the City of Plano and Reliant Energy Retail Services, L.L.C., a Delaware limited liability company; authorizing its execution by the City Manager or his authorized designee; authorizing the Director of Finance or her authorized designee to evaluate and execute a fixed price Energy Transaction Confirmation at an acceptable rate not to exceed $0.041 per kilowatt hour for the five-year term beginning January 1, 2018; authorizing the Director of Finance or her designee to renew the customer electricity supply agreement for an additional four-year term and select block and index pricing if in the best interests of the City at an acceptable rate not to exceed a fixed price of $0.045 per kilowatt hour; and providing an effective date.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: **2017-18 thru 2025-26**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	0	0	**0**
BALANCE	0	0	0	**0**

FUND(S): N/A

COMMENTS: This resolution authorizes the City Manager or his authorized designee to evaluate and execute a fixed price customer electricity supply agreement.

STRATEGIC PLAN GOAL: A Resolution of the City of Plano, Texas approving the terms and conditions of a customer electricity supply agreement with Reliant Energy Retail Services, L.L.C., relates to the strategic goal of Financially Strong City with Service Excellence.

SUMMARY OF ITEM

See Recommendation Memo and Resolution.

CITY OF PLANO
COUNCIL AGENDA ITEM

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Recommendation Memo Resolution Electric Energy Sales Agreement	

Memorandum

Date: June 8, 2016

To: Diane Palmer-Boeck, Director of Procurement and Project Management

From: Jim Razinha, Facilities Manager

Subject: Electricity Service Provider

Following approval of a staff committee recommendation to select an electricity provider for the City starting on January 1, 2018, Purchasing requested offers from TXU Energy, Reliant Energy Retail Services, L.L.C., and NextEra (all three are providers to other large cities in Texas) with the intent to negotiate a three to five year electric contract.

The City received offers from TXU Energy and Reliant Energy Retail Services, L.L.C. NextEra declined as it is associated with the City's current contract with Texas Coalition for Affordable Power (TCAP).

TXU Energy and Reliant Energy Retail Services, L.L.C., representatives presented to the Evaluation Team on May 12, 2016, addressing billing and invoicing processes, online access to our metering information, processes to start/stop service, reports, and the customer service staff that would be assigned to the City.

After the interviews, staff investigated the online services provided by the two vendors for ease of use, accessibility, reporting, and more. Also, Purchasing requested best and final offer of proposed rates for a nine year term (five year contract with option for four additional years).

Based on consideration of proposed rates, the access to information, and customer support staff, the Evaluation Team recommends entering into an agreement with Reliant Energy Retail Services, L.L.C., as the best value to the City.

A Resolution of the City of Plano, Texas, approving the terms and conditions of a customer electricity supply agreement by and between the City of Plano and Reliant Energy Retail Services, L.L.C., a Delaware limited liability company; authorizing its execution by the City Manager or his authorized designee; authorizing the Director of Finance or her authorized designee to evaluate and execute a fixed price Energy Transaction Confirmation at an acceptable rate not to exceed $0.041 per kilowatt hour for the five-year term beginning January 1, 2018; authorizing the Director of Finance or her designee to renew the customer electricity supply agreement for an additional four-year term and select block and index pricing if in the best interests of the City at an acceptable rate not to exceed a fixed price of $0.045 per kilowatt hour; and providing an effective date.

WHEREAS, the City of Plano's current Customer Electricity Supply Agreement ("CESA") expires on December 31, 2017; and

WHEREAS, it is necessary for the City to enter into a new CESA to supply electricity to City facilities beginning January 1, 2018; and

WHEREAS, commodity prices for electricity have historically experienced significant volatility, such that the entry into an agreement with a Retail Electric Provider ("REP") for a fixed or otherwise defined price will provide budgetary stability; and

WHEREAS, the City solicited proposals from REPs regarding the provision of electricity to City facilities for the term beginning January 1, 2018 through the issuance of a request for offers; and

WHEREAS, pursuant to Texas Local Government Code Section 252.022(a)(15), expenditures for electricity are exempt from competitive bidding requirements; and

WHEREAS, the City Council has been presented a proposed CESA for the provision of electricity to City facilities between Reliant Energy Retail Services, L.L.C., a Delaware limited liability company ("Reliant"), and the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, Reliant's proposed Agreement provides for fixed pricing for a term of five (5) years beginning January 1, 2018, with a City option to extend the contract for an additional four (4) year period utilizing block and index pricing during that renewal term; and

WHEREAS, current commodity prices for electricity, if fixed for the term beginning January 1, 2018, would be favorable if locked-in at rates which are available at the present time, and it is uncertain if rates as favorable would exist at the time the term of the Agreement began, *i.e.*, January 1, 2018; and

WHEREAS, daily price changes in commodity prices for electricity require customers to execute an Energy Transaction Confirmation under the Agreement immediately upon the receipt of a favorable offer to lock-in the offered rate for the term of the Agreement; and

WHEREAS, the block and index pricing which would be available for the four-year renewal term, if exercised, allows the City to select a rate for electricity from among an array of rates offered by Reliant at that time; and

WHEREAS, under the terms of the proposed Agreement, the City will be able to evaluate the potential benefits of extending the Agreement under block and index pricing, and will be empowered to refuse to renew the Agreement should the City determine that such renewal is not in the City's best interests in light of then-existing market conditions; and

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement should be approved, and that the City Manager or his designee shall be authorized to execute it on behalf of the City of Plano; and

WHEREAS, the City Council finds that it is in the best interests of the City to authorize the Director of Finance or her designee to enter into an Energy Transaction Confirmation under the Agreement at a time when the Director of Finance believes that a favorable rate has been offered by Reliant to lock-in the commodity price for electricity for the term to begin January 1, 2018 at a price not to exceed $0.041 per kilowatt hour; and

WHEREAS, the City Council finds that it is in the best interest of the City to authorize the Director of Finance or her designee to determine whether favorable market conditions exist at the conclusion of the initial five-year term of the Agreement such that the Agreement should be renewed, to enter into an additional Energy Transaction Confirmation based upon block and index pricing, and to select a block of energy pricing as proposed by Reliant if such block prices proposed by Reliant are consistent with existing market conditions, in the best interest of the City, and do not exceed a fixed price of $0.045 per kilowatt hour.

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

Section I. The City Council hereby finds and determines that the Agreement constitutes an expenditure for electricity and is therefore exempt from the competitive bidding requirements pursuant to Texas Local Government Code §252.022(a)(15).

Section II. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section III. The City Manager, or his authorized designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section IV. The Director of Finance, or her authorized designee, is hereby authorized to evaluate and execute an Energy Transaction Confirmation under the Agreement at a time when the Director of Finance believes that a favorable rate has been offered by Reliant to lock-in the commodity price for electricity for the five-year term to begin January 1, 2018 at a price not to exceed $0.041 per kilowatt hour.

Section V. The Director of Finance, or her authorized designee, is hereby authorized at the conclusion of the five-year initial term of the Agreement to review blocks of pricing proposed by Reliant for a four-year renewal of the Agreement and, if consistent with existing market conditions and in the best interest of the City, enter into an Energy Transaction Confirmation based upon such block and index pricing for a four-year renewal of the Agreement so long as the block and index price agreed to does not exceed a fixed price of $0.045 per kilowatt hour.

Section VI. The City will budget and approve funds necessary to pay electricity costs under the Agreement and any associated Energy Transaction Confirmations for the term(s) beginning on January 1, 2018.

Section VII. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this 28th day of June, 2016.

_____
Harry LaRosiliere, MAYOR

ATTEST:

_____
Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

_____
Paige Mims, CITY ATTORNEY

reliant
an NRG company

EXHIBIT A

ELECTRIC ENERGY SALES AGREEMENT
(Public Entity Master Agreement)

This Electric Energy Sales Agreement (this "Agreement") between Reliant Energy Retail Services, LLC, a Delaware limited liability company ("Reliant"), and City of Plano, a political subdivision of the State of Texas ("Customer") (individually referred to as a "Party" and collectively, the "Parties") (including all attached and referenced exhibits and annexes, which are incorporated in this Master Agreement, and all Energy Transactions, which together form a single, integrated agreement, this "Agreement") is effective on this _____ day of _____, 20____ (the "Effective Date"). Exhibit A sets forth definitions of capitalized terms not defined in the text.

PART 1: MASTER AGREEMENT SCOPE.

1.1 Scope. This Master Agreement commences on the Effective Date and continues month to month thereafter, unless terminated by either Party upon 30 days prior written Notice to the other Party, but this Agreement will continue to apply until all Energy Transactions are completed or terminated, final invoices are issued, and all amounts owed are paid in full. Further, all obligations regarding indemnity, payment of Taxes, limitations of liability, and waivers survive termination indefinitely, and confidentiality obligations survive termination for the period of the applicable statute of limitations.

1.2 Energy Transactions. The Parties from time to time may, but are not obligated to, enter into one or more Energy Transactions for the purchase and sale of electricity ("Energy") subject to this Master Agreement. An Energy Transaction may be formed by the Parties' agreement and evidenced by an Energy Transaction Confirmation issued by Reliant and signed by the Parties. Each Energy Transaction Confirmation must specify a product Exhibit C, attached to the Energy Transaction Confirmation, as the basis of the Energy Transaction. Each Energy Transaction Confirmation must also include an Exhibit D describing Customer Locations, Benchmark Quantities, and pricing components applicable to the Energy Transaction. If an inconsistency exists between the terms of this Master Agreement, an Energy Transaction Confirmation, and Exhibit C and Exhibit D, the Energy Transaction Confirmation prevails over this Master Agreement, and Exhibit C and Exhibit D prevail over the cover page to the Energy Transaction Confirmation.

1.3 Energy Transaction Term; Transition Term. The "Initial Term" of an Energy Transaction will be set forth in the Energy Transaction Confirmation. If any Customer Location(s) have not been switched to a new REP at the end of the Initial Term, then Reliant may continue to sell Energy to Customer for the Customer Locations, in accordance with this Agreement, and this Agreement will continue in effect for successive one month terms (collectively, the "Transition Term") until all Customer Location(s) are switched to a new REP (the Initial Term and the Transition Term, collectively, the "Term"). The Contract Charge for each month of the Transition Term (the "Transition Charge"), together with any new product terms, will be posted on Reliant's AccountConnect^{SM} website at www.reliant.com (the "Site"). It is the Customer's responsibility to access the Site for each Transition Charge and no other notice will be provided. At any time after the end of the Initial Term, if allowed by Law, Reliant may terminate the Energy Transaction Confirmation by transferring any remaining Customer Location(s) to the POLR or the appropriate REP.

PART 2: ENERGY TRANSACTIONS.

2.1 Sales and Purchases. Reliant will sell to Customer, and Customer will purchase from Reliant, Energy to satisfy all of Customer's Energy Requirements for each Customer Location for the Delivery Term. Customer Information forms the substantial basis for the calculation of charges for the Energy Transactions. To the best of Customer's knowledge, Customer Information is true and accurate as of the date furnished to Reliant and as of the Effective Date. Customer will take all actions necessary to effect the Energy Transactions, including, if requested by Reliant, executing an authorization form permitting Reliant to request changes of the Meter Read Date(s) for one or more Customer Locations. During the Delivery Term, Customer may not (a) have generation that is synchronously connected to the TDSP at any Customer Location, (b) resell any portion of the Energy purchased from Reliant to any third party, or (c) be qualified as a Resource in ERCOT.

2.2 Delivery of the Energy. Customer acknowledges that the TDSP owns and controls the electric transmission or distribution wires or equipment, has custody and control of the Energy sold and purchased under this Agreement, and has the responsibility to deliver the Energy to the Customer Locations. Reliant has no liability, obligation, or responsibility for the operations of the TDSP or for the interruption, termination, failure to deliver, or deterioration of the TDSP's transmission or distribution service.

2.3 Contract Charge. For all Energy deliveries under this Agreement, Customer agrees to pay Reliant the Contract Charge.

2.4 Billing. Following each month during the Delivery Term, Reliant will render to Customer the Reliant Invoice setting forth all charges and amounts due. Within five Business Days after the Effective Date, Customer will notify Reliant in writing of the address to which Reliant may submit invoices. Reliant's ability to invoice Customer is dependent on the TDSP's and ERCOT's ability to furnish Reliant all necessary information, including the Meter Read Dates for scalar meters and recorded data for interval data meters. Absent that information from the TDSP or ERCOT, Reliant may invoice Customer based on estimated data. After Reliant receives the required information, the estimated Reliant Invoice will be adjusted on a subsequent Reliant Invoice to reconcile differences between estimated and actual data.

2.5 Payment. Customer must pay, as specified in Exhibit B, the amount due stated on the Reliant Invoice on or before the later of (a) the 30th day after the Reliant Invoice date, or if not a Business Day, the immediately following Business Day, or (b) the due date for payment required under Chapter 2251 of the Texas Government Code (the "Due Date"). If an invoice is not paid by the Due Date, then Reliant will apply to Customer's account a late fee on the unpaid amount equal to the lesser of one percent or the maximum amount permitted by Law.

2.6 Payment Disputes. If Customer disputes amounts shown on the Reliant Invoice, Customer must (a) notify Reliant no later than 21 days after receipt of the Reliant Invoice and (b) pay Reliant the undisputed amount and furnish Reliant a written explanation specifying the amount disputed and the basis for the dispute. Upon receipt of notice that Customer disputes a Reliant Invoice, Reliant will promptly provide supporting documentation and such other information that Customer may reasonably request for purposes of verifying the disputed amount. Within 10 Business Days of resolution, if Customer owes Reliant money, then Customer must pay Reliant the amount owed plus interest at the Interest Rate from, and including, the Due Date to, but excluding, the date Reliant receives payment. Any amounts improperly billed and collected from Customer will be credited to Customer on its next Reliant Invoice, together with interest at the Interest Rate.

2.7. Customer Appropriations. The Parties to this Agreement understand and agree that any and all payments made in accordance with this Agreement shall be made only out of current revenues available to the Customer. In the event current revenues are not available, the Customer reserves the right to terminate this Agreement at the expiration of each budget period during the term of this

Agreement. Customer agrees to notify Reliant in writing of such termination due to unavailability of current revenues at the earliest practicable time subsequent to the failure to appropriate, and as of Customer's termination date, Reliant shall have no further duty to supply energy to Customer and unless agreed otherwise by the Parties shall move service for the Customer Locations to the POLR, or any other permissible REP established by the PUCT on the date of termination due to unavailability of current revenues. In such 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. Further, this Agreement is conditioned on a best efforts attempt by the Customer to obtain and appropriate funds for payment under the terms of this Agreement. Customer agrees, to the full extent allowed by Texas law, that if any funds are appropriated for energy costs, such funds shall be applied first to the cost of energy provided pursuant to this Agreement and that any such funds shall not be used to pay for energy from any other energy power provider for the accounts covered in this Agreement.

2.8 Indemnity. Reliant indemnifies, defends, and holds harmless Customer from any Claims arising from any act or incident with respect to Energy occurring before its delivery to the Grid. Neither Party is liable to the other Party for any Claims arising from any act or incident with respect to Energy on the Grid.

PART 3: DEFAULTS AND REMEDIES.

3.1 Events of Default. Each of the following events is an "Event of Default" with respect to an affected Party (the "Defaulting Party"):

(a) failing to make any required payment when due, if the failure is not cured within five Business Days after written Notice;
(b) making a material, false, or misleading representation or warranty under this Agreement, and not correcting the representation or warranty within five Business Days after written Notice;
(c) failing to perform any covenant not excused by Force Majeure if not cured within five Business Days after written Notice;
(d) making an assignment or general arrangement for the benefit of creditors in the event of voluntary or involuntary bankruptcy proceeding;
(e) becoming a party, voluntarily or involuntarily, to an action under bankruptcy or similar laws for the protection of creditors; or
(f) becoming bankrupt or insolvent.

No waiver by the other Party (the "Non-Defaulting Party") of any one or more Events of Default will be construed as a waiver of any other Event of Default.

3.2 Early Termination. If an Event of Default occurs, the Non-Defaulting Party may take one or more of the following actions for as long as the Event of Default continues:

(a) establish a date ("Early Termination Date") on which this Agreement and all Energy Transactions terminate; and
(b) disconnect, or cause to be disconnected, each Customer Location from electric service, or, if disconnection is not allowed by Law, transfer each Customer Location to the POLR or another REP as specified by Law.

The Parties agree that if Customer causes an Event of Default by switching away one or more Customer Locations to another REP prior to the expiration of the Initial Term, the Early Termination Date will be the earliest date a Customer Location is switched. Regardless of which Party is the Defaulting Party, Customer agrees that if an Early Termination Date occurs, it will remain liable to timely pay Reliant all charges for Energy sold until each Customer Location is transferred or is disconnected from electric service. If an Early Termination Date occurs, the Non-Defaulting Party determines its resulting damages as of the Early Termination Date pursuant to Section 3.3 below.

3.3 Damages. The actual damages of the Non-Defaulting Party are that Party's Costs, plus its Losses and minus its Gains, if any, determined as set forth in the definitions in Exhibit A and in this Section. If an Early Termination Date occurs before the Delivery Term begins, the damages will be calculated as though Reliant had delivered Energy to Customer throughout the Delivery Term until the end of the Initial Term. The Non-Defaulting Party will aggregate its Gains or Losses and Costs into a single net amount (the "Termination Payment"). If the calculation of the Termination Payment yields a positive amount, the Defaulting Party will owe that amount to the Non-Defaulting Party. If the calculation of the Termination Payment yields a negative amount, the Termination Payment will be zero and neither Party will owe a Termination Payment. Any Termination Payment owed to the Non-Defaulting Party will be setoff against any other amounts owing between the Parties under this Agreement and any other agreement, and a single, net amount payable ("Net Settlement Amount") will be due by one Party (the "Payor") to the other Party (the "Payee"). Promptly following the Early Termination Date, the Non-Defaulting Party will calculate the Net Settlement Amount and provide notice to the Defaulting Party. The Payor must pay the Net Settlement Amount to the Payee within five Business Days of the Defaulting Party's receipt of the Non-Defaulting Party's notice. The Net Settlement Amount will accrue interest at the Interest Rate from, and including, the Early Termination Date to, but excluding, the date the Payee receives payment.

PART 4: LIMITATION OF LIABILITIES. The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy its essential purposes. If an express remedy is provided, that remedy is the sole and exclusive remedy. If no remedy is expressly provided, the obligor's liability will be limited to direct actual damages as the sole and exclusive remedy. Except with respect to the recovery of Costs, neither Party will be liable for consequential, incidental, punitive, exemplary, or indirect damages, or other business interruption damages, by statute, in tort or contract, under any indemnity provision, or otherwise.

PART 5: REPRESENTATIONS. Each Party represents and warrants to the other Party continuing throughout the Term unless otherwise stated, that:

(a) it has the power and authority to sign and perform this Agreement; and
(b) it has knowledge and experience in business matters that enable it to evaluate the merits and risks of entering into this Agreement.

In connection with the negotiation and execution of this Agreement and each Energy Transaction, each Party represents to the other Party that:

(a) it is acting as principal (and not as agent for any other party or in any other capacity, fiduciary or otherwise, unless expressly stated);
(b) the other Party is not acting as a fiduciary or financial or investment advisor for it;
(c) it has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it considers necessary, and it has made its own decisions based upon its own judgment and upon any advice from those advisors as it deems necessary, and not upon any advice of the other Party;
(d) the other Party has not given to it (directly or indirectly through any other person) any advice, counsel, assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (either legal, regulatory, tax, financial, accounting, or otherwise) of this Agreement or any Energy Transaction;
(e) it is entering into this Agreement and each Energy Transaction with a full understanding of all of the risks (economic and otherwise) and it is capable of assuming and willing to assume those risks; and
(f) it has the capacity to evaluate and continually monitor (internally or through independent professional advice) this Agreement, each Energy Transaction, and the relevant markets (including the appropriateness or suitability thereof) and has made its own decision to enter into this Agreement and each Energy Transaction and to independently evaluate and monitor same on its own behalf.

PART 6: OTHER MATTERS.

6.1 Taxes. Except as provided in this Agreement, Customer is responsible for and will pay Reliant for all Taxes arising from or measured by the transactions contemplated by this Agreement or Reliant's receipts from those transactions, whether the Law imposes the Taxes on Reliant or Customer or the transactions. Reliant may collect Taxes from Customer by including them on the Reliant Invoice. Reliant understands and agrees that Customer, a governmental entity within the State of Texas, is exempt from Texas Sales & Use Tax on goods and services. Reliant will recognize a lawful sales tax exemption on a prospective basis only after Customer provides proper documentation to Reliant. If Customer is due a sales tax refund because of Reliant's failure to timely recognize valid exemption documentation, Reliant may credit the overpaid sales tax to Customer's account. Customer is responsible for petitioning the taxing authority for all other sales tax refunds.

6.2 Force Majeure. If a Party is unable because of Force Majeure to perform its obligations and that Party gives Notice of the event to the other Party as soon as practicable after its occurrence, then the obligations of the Party affected by the event (other than payment for Energy received and performance of other transactions or other obligations incurred before the Force Majeure event) will be suspended for the duration of the Force Majeure event. A Party may furnish Notice orally, but must provide a written Notice within two Business Days after the oral Notice. Nothing in this Section requires Reliant to supply, or Customer to receive, Energy at points other than the Customer Locations.

6.3 Law and Waiver of Consumer Rights. The rights and duties of the Parties are governed by, construed, enforced, and performed in accordance with the Law of the State of Texas (without giving effect to principles of conflicts of laws). With respect to any disputes arising out of or relating to this Agreement, exclusive jurisdiction and venue shall be proper in the state and federal courts located in Collin County, Texas. The Parties agree that Section 2.201 of the Texas Business & Commerce Code (relating to the statute of frauds) applies to this Agreement and electricity is considered a "good" for purposes of this Agreement. Reliant makes no representations or warranties except those expressly stated in these terms, and disclaims all other warranties, express or implied, including merchantability, conformity to models or samples, and fitness for a particular purpose. To the extent allowed by Law, Customer acknowledges and agrees that the Customer Protection Rules for Retail Electric Service adopted by the PUCT pursuant to PURA (PUCT Subst. Rules §25.471, et seq.) do not apply to this Agreement.

6.4 Change in Law. If either Party or its activities related to this Agreement are affected by any Law enacted after the Effective Date ("Change in Law") that makes performance of this Agreement unenforceable or illegal, then either Party, without any payment obligation or other liability (other than payment for Energy received and performance of other transactions or other obligations incurred before termination), may terminate this Agreement without consent of, and upon Notice to, the other Party, upon the earlier of 60 days prior Notice or other prior Notice effective on the date the Change in Law becomes effective. If a Change in Law becomes effective relating to the wholesale or retail electricity market in ERCOT and results in new or modified or reduced or eliminated, fees, costs of performance, including, but not limited to, Reliant's cost of goods sold (COGS) determined in accordance with generally accepted accounting principles (GAAP), or other charges being incurred by Reliant and other ERCOT energy suppliers (an "Increase Change" or "Decrease Change" as applicable), then Reliant may reasonably allocate and bill to Customer all of the Increase Changes or Decrease Changes incurred by Reliant as an additional charge or adjustment to the Contract Price. Reliant will notify Customer in writing (the "Notification Letter") before implementing the additional charge or adjustment to Contract Price. Customer may accept the charge or adjustment by executing the Notification Letter and returning it to Reliant within fifteen Business Days of the date of the Notification Letter. If Customer does not timely execute and return the Notification Letter, or if the Parties are unable to reach agreement on a mutually acceptable restructuring, then the Party adversely affected by the Change in Law may terminate this Agreement upon 30 days prior written Notice to the other and payment of a Termination Payment by the Party that realizes a Gain as a result of the termination pursuant to this provision. If the Agreement is terminated, then, notwithstanding the calculations set forth in Section 3.3 of the Agreement, the termination payment ("Change in Law Termination Payment") will be calculated by determining the terminating Party's Losses and Gains. The Party who realizes a Gain will pay the other Party the amount of the Gain. Reliant reserves the right to setoff any Change in Law Termination Payment against any amounts that remain due and owing between the Parties under this Agreement or any other agreement in order to reach a Net Settlement Amount, as contemplated in Section 3.3. The Net Settlement Amount will accrue interest at the Interest Rate from, and including, the termination date specified in the Notice to Customer to, but excluding, the date the Payee receives payment. If all Customer Locations are not switched to a new Energy supplier effective upon the termination date specified in the Notice to Customer, then Reliant will have the rights specified in the Term provision of the Agreement.

6.5 Confidentiality. Neither Party will disclose any terms or documents provided under or relating to this Agreement, including the Password, to a third party (other than a Party's and its affiliates' employees, lenders, counsel, permitted assignees, consultants, accountants, or prospective purchasers who have agreed to confidentiality), except in order to comply with Law. The Parties are entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this obligation, subject to Part 4.

6.6 Assignment. (A) If Customer desires to sell or lease all or a portion of Customer Locations to another entity, Customer may assign this Agreement to the assignee as to all Customer Locations or cause the assignee to enter into an agreement with Reliant on the same terms and conditions set forth in this Agreement as to that portion of Customer Locations sold or leased, on the following conditions:

(1) Customer is not a Defaulting Party;
(2) the assignee satisfies Reliant's collateral and credit requirements; and
(3) the assignee assumes Customer's obligations in writing and in a form legally adequate for that purpose;

(B) Reliant may assign this Agreement without Customer's consent, under the following circumstances or conditions:

(1) in connection with any financing or other financial arrangements involving the assignment, sale, pledge, or encumbering of this Agreement or its accounts, revenues, or proceeds;
(2) the assignment is to an affiliate of Reliant;
(3) the assignment is to any person or entity succeeding to all or a substantial portion of Reliant's assets; or
(4) the assignment is to a certified REP.

In the cases of (B)(2) and (B)(3) above, the assignee must have a credit rating of at least BB- by Standard & Poor's Credit Market Services, a division of the McGraw Hill Companies, or a B1 by Moody's Investors Service, Inc. and assume Reliant's obligations in writing and in a form legally adequate for that purpose.

If a Party makes an assignment in compliance with (A), (B)(2), (B)(3), or (B)(4) above, the assigning Party will have no further obligations regarding future performance with respect to the assigned Customer Locations, except to make full payment for obligations incurred before the date the assignee agrees to assume the obligations and to comply with continuing confidentiality obligations. Except as provided in this Section, neither Party may assign this Agreement or any of its rights or obligations without the other Party's prior written consent, which consent may not be unreasonably withheld.

6.7 Partial Termination. Customer may delete one or more, but not all, Customer Locations (and associated Benchmark Quantities as determined by Reliant in its sole discretion) from the Agreement ("Partial Termination"), only if Customer (a) closes those Customer Location(s) for the remainder of the Term, or (b) sells those Customer Location(s) and the buyer of the locations does not assume obligations to purchase energy under this Agreement. Customer must

provide Reliant with at least 30 days prior written notice of its intent to delete Customer Location(s) from the Agreement on these conditions. Customer must pay Reliant a partial Termination Payment for the deleted Customer Location(s). Reliant will calculate the partial Termination Payment in the same manner as provided in Section 3.3, using only the Benchmark Quantities for the deleted Customer Locations, and bill the amount of the partial Termination Payment on a subsequent Reliant Invoice.

6.8 Relationship of the Parties. Nothing in this Agreement (a) constitutes or implies a joint venture, partnership, association, or any fiduciary or similar obligation or liability between the Parties or (b) provides any benefit to any third party or entitles any third party to any claim, cause of action, remedy, or right of any kind, other than in connection with an assignment to a permitted assignee. Reliant does not provide, and nothing in this Agreement will be construed as providing, advice regarding the value or advisability of trading in commodities that would cause Reliant or any of its affiliates to be considered a commodity-trading advisor under applicable Law.

6.9 Documentation. Nothing in this Master Agreement limits any particular confirmation procedures intended to form transactions under the terms of any exhibits or annexes attached to any Energy Transaction Confirmation or this Master Agreement. This Agreement together with the Energy Transaction Confirmations constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous agreements, proposals, or representations affecting the subject of this Agreement and the Customer Locations. Facsimile signatures are effective as originals. Except as provided in Section 6.4, if a provision becomes unlawful or unenforceable, the other provisions of this Agreement will remain in full force and effect, except that if either Party determines, in its sole discretion, that the unlawful or unenforceable provision causes a material change to the original purpose of this Agreement, the Parties will promptly enter into negotiations to replace the provision with a valid and enforceable provision that preserves the original intent of the Parties. All amendments must be reduced to writing and executed by the Parties, except (i) as otherwise provided in Section 1.3 and (ii) amendments to add or delete Customer Locations and amend Benchmark Quantities. If Customer and Reliant agree to add or delete Customer Locations, the additions and deletions will be implemented as follows: (i) Customer may request an amendment to Exhibit D by sending to Reliant an email requesting that a Customer Location be added or deleted, identifying any resulting changes to Benchmark Quantities, and attaching the addition/deletion form provided by Reliant (the "Email Request"), and (ii) the amendment will be effective only when Reliant sends an email to Customer confirming acceptance of the amendment and attaching an amended Exhibit D showing the agreed additions or deletions (the "Email Confirmation"). Each Party is entitled to assume that emails sent from the other Party under this provision are sent by an authorized representative.

6.10 Notices. Unless provided otherwise, the Parties will send Notices relating to this Agreement in writing by regular mail, electronic mail (confirmed receipt), overnight carrier, facsimile, or hand delivery. Notice by regular mail will be deemed received three Business Days after mailed. Notice by registered or certified mail, return receipt requested, will be deemed received on the date the receiving Party signed for it. Notice by facsimile, Internet, or hand delivery will be deemed received by close of the Business Day transmitted or delivered (if transmitted or delivered after that close, it will be deemed received by the close of the next Business Day). Notice by overnight mail or courier will be deemed received two Business Days after the day it was sent.

6.11. No Prohibited Interest/Compliance with Equal Rights Ordinance: Reliant acknowledges and represents that it is aware of the laws, City Charter, and City Code of Conduct regarding conflicts of interest. The City charter states that "no officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, nor shall be financially interested, directly or indirectly, in the sale to the City of any land, or rights or interest in any land, materials, supplies or service. Reliant agrees to comply with Section 2-11(F) of the City Code of Ordinances, which reads as follows:

"It shall be unlawful for an employer to discriminate against any person on the basis of race, color, sex, religion, age, national origin, genetic information, sexual orientation, gender identity, disability status or United States military/veteran status by the following actions or inactions:

(a) for an employer to fail or refuse to hire, or to discharge, any person;
(b) for an employer to discriminate against any person with respect to compensation, terms, conditions or privileges, of employment;
(c) for an employer to limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee;
(d) for an employment agency to fail or refuse to refer for employment, or to otherwise discriminate against, any person because of a protected employment characteristic;
(e) for an employment agency to classify or refer for employment any person, on the basis of a protected employment characteristic;
(f) for a labor organization to exclude or expel from its membership, or to otherwise discriminate against, any person because of a protected employment characteristic;
(g) for a labor organization to fail or refuse to refer for employment any person because of a protected employment characteristic;
(h) for a labor organization to limit, segregate or classify its members or applicants for membership, in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee or as an applicant for employment; or
(i) for a labor organization to cause or attempt to cause an employer to discriminate against a person in violation of this subsection;
(j) for an employer, a labor organization or a joint labor-management committee, to discriminate against any person because of a protected employment characteristic in the admission to, or employment in, any program established to provide apprenticeship or other training;
(k) for an employer to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic;
(l) for an employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to membership in or any classification or referral for employment by the employment agency that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic; or
(m) for a joint labor-management committee to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic."

Reliant, its directors, officers and employees must comply with Section 2-11(F) of the City Code of Ordinances unless an exclusion applies, as indicated below. If Section 2-11(F) applies, Reliant is entitled to apply to the City Manager for a waiver from signing this section of the affidavit based on a conflict with state or federal law. This Agreement will not be executed prior to the waiver issue being resolved.

Having made reasonable inquiry, Reliant affirms that it, its directors, officers and employees agree to comply with Section 2-11(F); or Reliant is excluded from this Ordinance because it is: 1) a religious organization; 2) a political organization; 3) an educational institution; 4) a branch or division of the United States government or any of its departments or agencies; 5) a branch or division of the State of Texas or any of its departments, agencies or political subdivisions; 6) a private club that is restricted to members of the club and guests and not open to the general public; 7) not an "employer" under Section 2-11(F) because it has not had 15 or more

employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

6.12. Delinquent Taxes: Section 2-2 of the City Code of Ordinances prohibits the payment of public funds to persons that owe delinquent taxes to the City of Plano. Therefore, payment to a Reliant for goods or services provided to the City under this Agreement may be withheld in the event Reliant owes delinquent taxes to the City.

6.13. Employment Eligibility Verification. the immigration reform and control act of 1986 (IRCA) makes it illegal for employers to knowingly hire or recruit immigrants who do not possess lawful work authorization and requires employers to verify their employees' work eligibility on a U.S. department of justice form I-9. Reliant warrants that it is in compliance with IRCA and will maintain compliance with IRCA during the term of this Agreement with the City. Reliant warrants that it has included or will include a similar provision in all written agreements with any subcontractors engaged to perform services under this contract.

PART 7: CUSTOMER ACKNOWLEDGEMENT. Customer acknowledges that Energy prices may be subject to substantial volatility based on economic conditions, fuel prices, seasonal electricity demands, generator outages, weather and other factors. Customer also acknowledges that past results regarding electricity products are not necessarily an indication of future results.

This Agreement may be executed in multiple counterparts to be construed as one as of the Effective Date.

RELIANT ENERGY RETAIL SERVICES, LLC

By: _____
Name: Robert Gaudette
Title: _____

CITY OF PLANO

By: _____
Name: _____
Title: _____

reliant
an NRG company

EXHIBIT A: CERTAIN DEFINITIONS

The following terms have the stated meanings and apply to singular and plural forms, and the term "including" means including, without limitation.

"*Benchmark Quantity*" means Customer's expected kWh electricity consumption for the Term, which may be set out on the applicable Exhibit D, depending on the Customer's product. If Customer's expected consumption is not set out on the applicable Exhibit D, Reliant will determine the Benchmark Quantity by reference to Customer Information and Customer's 12 months of electricity consumption before the Effective Date or the most recent Amendment, or Energy Transaction Confirmation, or for new facilities, Customer Information and electricity consumption of comparable facilities, each as may be adjusted in accordance with this Agreement.

"*Business Day*" means each day that Federal Reserve member banks in New York City are open for business.

"*Claims*" means all claims or actions, threatened or filed before or after this Agreement is terminated, and whether groundless, false, or fraudulent, that directly or indirectly relate to a subject matter of an indemnity, and resulting losses, damages, expenses, attorneys' fees, and court costs however incurred.

"*Commencement Date*" is stated for each Customer Location in Exhibit D to the applicable Energy Transaction Confirmation.

"*Contract Charge*" means for deliveries of Energy during the Initial Term, the Contract Charge specified in Exhibit C or for deliveries of Energy during the Transition Term, the Contract Charge specified in Section 1.3, as applicable.

"*Costs"* means fees, commissions, administrative, operating, and other transaction costs, reasonably incurred as a result of the termination of obligations under, and in entering into new obligations that replace, the Energy Transactions, and reasonable attorneys' fees incurred in connection with enforcing a Party's rights.

"*Customer's Energy Requirements*" means an amount of Energy equal to 100% of the actual Energy requirements of the Customer Location(s), as measured by the TDSP during the Delivery Term, not to exceed the physical capabilities of TDSP's facilities or contravene applicable utility service rules or tariffs or Law.

"*Customer Information*" means information regarding Customer's business, Customer Locations, with meter or account numbers, historical and projected Energy usage, load factors, time of use, hours of operation, utility rate classes, agreements, and schedules, and other information reasonably required to substantiate Customer's Energy Requirements.

"*Customer Location*" means each of Customer's premises or facilities in ERCOT that are described on Exhibit D to the applicable Energy Transaction Confirmation.

"*Delivery Term*" means with respect to an Energy Transaction, for each Customer Location, the period commencing on the first Meter Read Date on or after the Commencement Date, and ending the last day of the Term, but, if a switch of supplier is required, then the Delivery Term commences on the later of (a) the first Meter Read Date on or after the Commencement Date and (b) the date that all actions have been taken by the TDSP, ISO, and ERCOT for Reliant to sell Energy to Customer for each Customer Location and for Customer to purchase and receive the Energy from Reliant for each Customer Location, including fully switching Customer to Reliant. No interruption or delay in purchases or sales after the Commencement Date, including Force Majeure, will operate to extend the Delivery Term.

"*Energy Transaction*" means a transaction for the purchase and sale of Energy effectuated pursuant to Section 1.2 upon the Parties' agreement to the Initial Term, Exhibit D, Exhibit C, and any other matters agreed upon by the Parties, all as set forth in the Energy Transaction Confirmation.

"*Energy Transaction Confirmation*" means a confirmation signed by the Parties in form legally adequate evidencing the terms required for an Energy Transaction.

"*ERCOT*" means the Electric Reliability Council of Texas.

"*Force Majeure*" means an event (a) not within the reasonable control of the Party claiming suspension ("Claiming Party") (or in the case of third party obligations or facilities, the third party), (b) not caused by the negligence of the Claiming Party, and (c) which the Claiming Party, exercising due diligence, is unable to overcome or for which the Claiming Party is unable to obtain commercially reasonable substitute performance. Force Majeure includes: (a) an event of Force Majeure affecting the TDSP or ERCOT, (b) a suspension, curtailment, or service interruption by the TDSP or ERCOT, or (c) acts of god, acts of terrorism, civil insurrection, or war.

"*Gain*" means the Present Value of the economic benefit (exclusive of Costs) to a Non-Defaulting Party resulting from the termination of the Energy Transactions, determined by comparing the Present Value of each Terminated Contract to the Present Value of each Replacement Contract, in the same manner that Losses are determined. If the Present Value of a Terminated Contract exceeds the Present Value of a Replacement Contract for Customer as the Non-Defaulting Party, Customer is deemed to have realized a Gain. If the Present Value of a Replacement Contract exceeds the Present Value of a Terminated Contract for Reliant as the non-defaulting Party, Reliant is deemed to have realized a Gain.

"*Grid*" means the transmission and distribution systems of TDSPs in ERCOT.

"*Interest Rate*" means the lesser of (a) an annual rate equal to 2% over the per annum prime lending rate published in *The Wall Street Journal* under "Money Rates" and in effect on the first day of the month during which the charge is assessed or damages are determined, as the case may be, or (b) the interest rate required under Chapter 2251 of the Texas Government Code; provided that the Interest Rate charged and collected may never exceed the maximum rate permitted by Law.

"*kW*" means kilowatt and "*kWh*" means kilowatt-hour.

"*Law*" means any law, statute, regulation, rule, ERCOT protocol, exchange rule, decision, writ, order, decree, or judgment, or any interpretation thereof by any court, agency, or instrumentality having jurisdiction, including ERCOT.

"*Losses*" means the amount equal to the Present Value of the economic loss, if any, to a Party resulting from the termination of Energy Transactions. Economic loss does not include Costs. Economic loss is determined as follows:

(a) If Customer is the Non-Defaulting Party, economic loss is the Present Value of each Terminated Contract subtracted from the Present Value of a Replacement Contract.

(b) If Reliant is the Non-Defaulting Party, economic loss is the Present Value of a Replacement Contract subtracted from the Present Value of each Terminated Contract.

"*Meter Read Date*" means the actual meter read date that corresponds to the TDSP's regularly scheduled meter read date, as ascertained from the meter reading schedule published on the TDSP's website.

"*Notice*" means all notices, requests, and Reliant Invoices to be made as specified in Exhibits B or D.

"*POLR*" means the REP designated by the PUCT required to offer Energy to any requesting customer in a specified territory.

"*Present Value*" means a discounted value calculated using the one year London InterBank Offered Rate quoted in the *Wall Street Journal* as of the Early Termination Date.

"*PUCT*" means the Public Utility Commission of Texas.

"*PURA*" means the Public Utility Regulatory Act.

"*REP*" means a seller of Energy that is permitted under the PURA to sell Energy to customers located in the State of Texas.

"*Reliant Invoice*" means the monthly invoice(s) rendered by Reliant to Customer reflecting amounts payable by Customer. "Monthly" means either a calendar month or such other period of approximately 30 days based on the TDSP's schedule for reading meters at Customer Locations and established to allow for invoicing of all Customer Locations on the Reliant Invoice.

"*Replacement Contract"* means a replacement contract for the applicable Energy Transaction whose value is calculated by using Customer's Energy Requirements based on the Benchmark Quantity for each Customer Location and relevant

market prices as of the Early Termination Date for the remainder of the Term. To ascertain the market prices of a Replacement Contract, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of New York Mercantile Exchange futures contracts, quotations from leading dealers in Energy swap contracts, and other bona fide third party offers, all adjusted for the remainder of the Term, as applicable, load shape, and basis differential. The Non-Defaulting Party is not required to enter into a Replacement Contract to determine its damages.

"*Resource*" means facilities capable of providing Energy or load capable of reducing or increasing the need for Energy or providing Ancillary Services, as defined in Exhibit C, to the ERCOT System, as described in the ERCOT protocols.

"*Taxes*" means all federal, state, and local taxes, fees, governmental charges, and assessments, presently or hereafter imposed on Customer as purchaser of Energy, on Reliant as seller of Energy, or on the Energy Transactions, including Texas state and local sales and use taxes, the Texas gross receipts tax on utility companies, the PUCT gross receipts tax assessment on REPs, municipal administrative fees on REPs, and generation, utility, regulatory, Btu, or electricity taxes and assessments, but excluding taxes imposed on net income and real property.

"*TDSP*" means the entities that own the transmission and distribution equipment for delivering the Energy to a Customer Location, and any successors to those entities.

"Terminated Contract" means an Energy Transaction that has been terminated. Its value is the Energy Transaction's Present Value had it not been terminated. The Present Value is calculated as of the Early Termination Date using Customer's Energy Requirements based on the Benchmark Quantity for each Customer Location for the remainder of the Term.

EXHIBIT B: NOTICES AND PAYMENTS

RELIANT

NOTICES & CORRESPONDENCE:

Reliant Energy Retail Services, LLC
1201 Fannin
Houston, Texas 77002
Attn: Reliant Contract Management

P.O. Box 3412
Houston, Texas 77253-3412
Attn: Reliant Contract Management

Facsimile No: (832) 584-2010

With a copy to:
Vice President, Sales and Marketing

BILLING & ACCOUNTING MATTERS:

Reliant Energy Retail Services, LLC
P.O. Box 1532
Houston, Texas 77251-1532
Attn: Invoicing

Telephone: (888) 275-6859

Email Request (Section 6.9): Email your Customer Care specialist or Solutions @ reliant.com
Reliant's Customer Care Number: (888) 315-1558

CUSTOMER

NOTICES & CORRESPONDENCE

City of Plano
1520 K Avenue, Suite 370
Plano, Texas 75074
Attention: Denise Tacke
Telephone No.: (972) 941-5233
Facsimile No.: (972) 422-0318
E-Mail Address: deniset@plano.gov

City of Plano
1520 K Avenue, Suite 250
Plano, Texas 75074
Attention: Jim Razinha
Telephone No.: (972) 941-7152
Facsimile No.: (972) 941-7397
E-Mail Address: jimraz@plano.gov

INVOICES

City of Plano
1520 K Avenue, Suite 370
Plano, Texas 75074
Attention: Denise Tacke
Telephone No.: (972) 941-5233
Facsimile No.: (972) 422-0318
E-Mail Address: deniset@plano.gov
Invoice Type: Regular
Invoice Address: *(As specified in the customer location information table)*