

**FORT BEND COUNTY FY 2010
COMMISSIONERS COURT AGENDA REQUEST FORM**

Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

Date Submitted: 01-21-2010

Submitted By: Hopie Solomon

Department: 6451 Social Services

Court Agenda Date: 1-26-10

Phone Number: 281-238-3506

SUMMARY OF ITEM: Authorize Fort Bend County Health & Human Services Social Services Department to enter into agreement with TXU Energy for participation in the TXU Energy Efficiency Assistance Program to help reduce energy related costs of Fort Bend County residents who are customers of TXU Energy.

RENEWAL AGREEMENT/APPOINTMENT

YES ☐

NO ☒

REVIEWED BY COUNTY ATTORNEY'S OFFICE:

YES ☒

NO ☐

List Supporting Documents Attached: *TXU Energy Efficiency Assistance Agreement Forms*

FINANCIAL SUMMARY:

BUDGETED ITEM: YES ☐

NO ☒

FUNDNG SOURCE: Accounting Unit:
Activity (If Applicable):

Account Number:

DESCRIPTION OF LAWSON ACCOUNT: _____

Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

DISTRIBUTION:

Original Form Submitted with back up to County Judge's Office ☐ (✓ when completed)

If by E-Mail to ospindon@co.fort-bend.tx.us

If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

- | | |
|--|--|
| <input type="checkbox"/> Auditor (281-341-3774) | <input type="checkbox"/> Comm. Pct. 1 (281-342-0587) |
| <input type="checkbox"/> Budget Officer (281-344-3954) | <input type="checkbox"/> Comm. Pct. 2 (281-403-8009) |
| <input type="checkbox"/> Facilities/Planning (281-633-7022) | <input type="checkbox"/> Comm. Pct. 3 (281-242-9060) |
| <input type="checkbox"/> Purchasing Agent (281-341-8642) | <input type="checkbox"/> Comm. Pct. 4 (281-980-9077) |
| <input type="checkbox"/> Information Technology (281-341-4526) | <input type="checkbox"/> County Clerk (281-341-8697) |
| <input type="checkbox"/> Other: | <input type="checkbox"/> County Atty (281-341-4557) |

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify):

2-4-10 2 orig. ret. to Hopie at Social Services

Memo

To: County Judge Hebert and Commissioners

From: Hopie Solomon

Date: 1/21/2010.

Re: Agenda notification

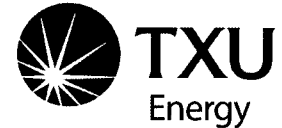
The attached agreement with TXU will appear on an up-coming agenda. Please note Mary Reveles with the County Attorney's office has approved it for court consideration.

Cc: Dr. Jean N. Galloway

Ed Sturdivant

Pamela Gubbels

COUNTY JUDGE
RECEIVED
JAN 21 2010



ENERGY EFFICIENCY ASSISTANCE AGREEMENT

This Energy Efficiency Assistance Agreement is made, entered and effective as of December 16, 2009, by and between TXU Energy Retail Company LLC, a Texas limited liability company ("**TXU Energy**"), and Fort Bend County Social Services, a non-profit charitable organization organized under the laws of Texas (the "**Agency**").

RECITALS

A. TXU Energy and Agency recognize the need for providing charitable energy efficiency assistance to persons in financial distress to help reduce energy related costs essential to their health and welfare.

B. TXU Energy has developed the TXU Energy Low Income Energy Efficiency Program (the "**Program**") as a supplement to government and community aid programs designed to assist persons in financial distress to reduce energy related costs.

C. Each beneficiary under the Program must be the named person, full-time resident or named business on the TXU Energy electric account for which assistance is being requested (each, a "**TXU Customer**").

D. Agency is organized, among other things, to provide charitable assistance to persons in financial distress, and Agency recognizes that the Program is a program for providing charitable assistance to individuals.

E. In the "prescribed" portion of the Program (the "**Prescribed Program**"), (i) Agency will select individuals meeting assistance qualification criteria to be determined by Agency and approved by TXU Energy (individuals meeting such criteria being referred to herein as "**Candidate Individuals**"), and will periodically provide TXU Energy with applications in respect of Candidate Individuals, and (ii) Agency will submit to TXU Energy applications in respect of apartment complexes that may qualify for energy efficiency assistance from TXU Energy ("**Candidate Complexes**"). For Candidate Individuals and Candidate Complexes that are TXU Customers and as to which TXU Energy agrees to provide energy efficiency assistance, TXU Energy will coordinate directly or through TXU Energy's contractors the provision of energy efficiency services.

F. In the "custom" portion of the Program (the "**Custom Program**"), Agency will submit to TXU Energy applications for grants to individuals that Agency believes to be deserving of energy efficiency assistance services (each such individual, a "**Custom Candidate**"), which applications will be evaluated by TXU Energy. For applications in respect of TXU Customers as to which TXU Energy agrees to provide a grant under the Custom Program, TXU Energy will provide either grant funds (or, in certain cases, products in lieu of grant funds) to the Agency, and the Agency will coordinate the provision of the energy efficiency services with the applicable grantees.

NOW THEREFORE, In consideration of the foregoing, the mutual covenants hereinafter set forth and other consideration, the receipt and sufficiency of which are hereby acknowledged, TXU Energy and Agency hereby agree as follows:

1. **The Program.** Agency acknowledges that TXU Energy has established the Program and that the Program is funded by voluntary contributions from TXU Energy. Without limitation, Agency further acknowledges that the policies and procedures governing the collection and the disbursement of the funds contributed to the Program (the "**Program Funds**") shall be established and may be modified by TXU Energy at its sole discretion.

(a) The Prescribed Program. Agency and TXU Energy have agreed on certain guidelines regarding the qualification of Candidate Individuals and Candidate Complexes for inclusion in the Prescribed Program. Such qualifications are set forth on Exhibit A attached hereto.

(i) *Assistance to Candidate Individuals.* From time to time, Agency will provide to TXU Energy program applications for Candidate Individuals, each such application to be (A) in the form of Exhibit B-1 attached hereto, in the case of a government-funded Agency, and (B) in the form of Exhibit B-2 attached hereto, in the case of a privately funded Agency. For each Candidate Individual that is a TXU Customer, TXU Energy will determine, in its sole discretion, whether or not to provide the energy efficiency services outlined in the application received from Agency. If TXU Energy shall elect to provide energy efficiency services, Agency will assist TXU Energy as necessary in scheduling service appointments with the Candidate Individuals, and TXU Energy otherwise will coordinate directly or through TXU Energy's contractors the provision of such energy efficiency services.

(ii) *Assistance to Candidate Complexes.* From time to time, Agency will provide to TXU Energy program applications for Candidate Complexes, each such application to be in the form of Exhibit B-3 attached hereto. For each Candidate Complex that is a TXU Customer and as to which greater than 50% of the residents are TXU Customers, TXU Energy will conduct its own evaluation of what types of energy efficiency services may be helpful for such Candidate Complex and its residents and, in TXU Energy's sole discretion, whether or not to provide such energy efficiency services. If TXU Energy shall elect to provide energy efficiency services to a Candidate Complex, Agency will assist TXU Energy as necessary in scheduling service appointments with the Candidate Complex and its residents, and TXU Energy otherwise will coordinate directly or through TXU Energy's contractors the provision of such energy efficiency services.

(b) The Custom Program. From time to time, Agency will provide to TXU Energy grant applications in respect of Custom Candidates, each such application to include all of the information specified in the form of Exhibit C attached hereto (each, a "**Custom Program Application**"). For each Custom Candidate that is a TXU Customer, TXU Energy will determine, in its sole discretion, whether or not to provide the energy efficiency services outlined in the applicable Custom Program Application. If TXU Energy shall elect to fund a grant for a particular Custom Candidate, TXU Energy will fund such grant and/or provide products in lieu of such funding to Agency as provided below.

2. **Custom Program Funds and Custom Program Products.** TXU Energy from time to time may allocate to Agency a portion of the Program Funds for the Custom Program ("**Custom Program Funds**") and/or provide TXU Energy prescribed products ("**Custom Program Products**") in lieu of Program Funds. All Custom Program Funds so allocated will be in the form of a payment to the Agency unless TXU Energy, at its sole discretion, chooses to provide Custom Program Products to Agency in lieu of all or a portion of Custom Program Funds. Agency will use said Custom Program Funds and/or Custom Program Products as provided herein and in the applicable Custom Program Application. TXU Energy reserves the right at any time to request that Agency refund to TXU Energy all Custom Program Funds and/or Custom Program Products not distributed by Agency, in which case Agency will forward payment of all such undistributed funds and return all such undistributed products to

TXU Energy within 30 days of receipt of TXU Energy's request therefore. TXU Energy reserves the right to cease or limit distribution of the Custom Program Funds and/or Custom Program Products to Agency at TXU Energy's discretion.

3. Custom Program Guidelines.

(a) A Custom Candidate does not have to meet federal poverty income guidelines in order to be eligible to receive Custom Program Funds or Custom Program Products; however, Custom Candidates shall have income less than or equal to 200% of the federal poverty level or an eligible client as determined by the agency.

(b) A Custom Candidate must be a TXU Customer.

(c) Custom Program Funds may only be used to pay for energy efficiency services as described in the applicable Custom Program Application.

(d) Custom Program Products may only be used as described in the applicable Custom Program Application.

(e) A Custom Candidate will be eligible to receive Custom Program Funds and/or Custom Program Products only one time per calendar year; provided that TXU Energy and Agency may, on a case by case basis, make exceptions for specific Custom Candidates, if in TXU Energy's and Agency's reasonable opinion such exceptions are warranted given the circumstances.

(f) A Custom Candidate will not be entitled to receive any benefit from the Custom Program unless the Custom Candidate has executed an information release form granting Agency the right to contact third parties in order to obtain information regarding the Custom Candidate.

4. Monthly Program Report. Agency, from and after such time as it shall have submitted any one or more Custom Program Applications, will complete a Monthly Program Report, in the form of Exhibit D hereto, for each month and return the same to TXU Energy no later than the tenth day of the month following the month for which the report is being submitted. TXU Energy may from time to time amend the form, content and information requested in the Program Monthly Report by providing thirty days prior written notice to Agency.

5. Program File. Agency will maintain a file and record of each application submitted to TXU Energy hereunder, evidence of proper qualification of the applicant(s) under each such application, and each transfer of Program Funds and/or Custom Program Products from TXU Energy to Agency and from Agency to or on behalf of Candidates. Such file shall contain, without limitation, the following:

(a) a copy of all checks evidencing monies received from TXU Energy or distributed by Agency in conjunction with the Custom Program;

(b) a copy of all receipts evidencing the distribution by Agency of Custom Program Funds;

(c) a description and quantity of the Custom Program Products received from TXU Energy or distributed by Agency and the participants who received them;

(d) a copy of all applications submitted to TXU Energy hereunder and all application materials in respect thereof; and

(e) a copy of each completed Monthly Program Report.

6. **Right to Audit.** TXU Energy and its designated agents, representatives, accountants and attorneys shall have full access, at all reasonable times, to the properties, books and records of Agency for examination of Agency's administration of Program Funds and Custom Program Products.

7. **Non-exclusive Agreement.** Agency acknowledges that TXU Energy may enter into one or more agreements with other charitable organizations, including charitable organizations located within Agency's service area, pursuant to which such other organizations will be eligible to participate in the Program or in any other charitable program undertaken by TXU Energy.

8. **Term and Termination.** Either Agency or TXU Energy may terminate this Agreement, with or without cause, with thirty days prior written notice to the other party; provided that all of Agency's obligations hereunder in respect of applications submitted to TXU Energy prior to the date of any such termination shall survive such termination.

9. **Miscellaneous.**

(a) **Governing Law.** This Agreement will be governed by the laws of the State of Texas without regard to conflicts of laws principles.

(b) **Waiver.** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by either party in exercising any right, power or privilege under this Agreement will operate as a waiver of such right, power or privilege. No single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (i) no claim or right arising out of this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party, (ii) no waiver that may be given by a party will be applicable except in the specific instance for which it is given, and (iii) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

(c) **Binding Effect; Delegation of Duties Prohibited.** This Agreement inures to the benefit of, and is binding upon, the parties hereto and their respective successors, assigns, heirs and legal representatives, including any entity with which TXU Energy may merge or consolidate or to which all or substantially all of its assets may be transferred. The duties and covenants of the Agency under this Agreement, being personal, may not be delegated or assigned.

(d) **Notices.** Whenever it is provided in this Agreement that any notice, demand, request, consent, approval, declaration or other communication be given to or served upon any of the parties by another, such notice, demand, request, consent, approval, declaration or other communication will be in writing and will be deemed to have been duly given (i) when received if personally delivered, (ii) when transmitted if transmitted by facsimile (except that facsimiles transmitted after 5:00 p.m. in the recipient's time zone will be deemed delivered the next business day) or other electronic transmission method, (iii) the business day after it is sent, if sent for next business day delivery to a domestic address by a nationally recognized overnight delivery service (i.e. Federal Express) and (iv) three business days after it is sent, if sent by certified or registered mail, return receipt requested. In each case notice will be sent to:

If to TXU Energy:	TXU Energy Retail Company LLC
	6555 Sierra Drive
	Irving, Texas 75039
	Attn: Senior Manager of Customer Advocacy
	Facsimile: 800.556.6753

If to Agency:

Fort Bend County Social Services
4520 Reading Road, Suite A
Rosenburg, TX 77471
Attn: County Judge
Facsimile: 281.342.0557

or at such other address as the intended recipient will from time to time designate by written notice delivered in accordance herewith.

(e) Entire Agreement; Amendments. This Agreement contains the entire agreement between the parties with respect to subject matter hereof and supersedes all prior agreements and understandings, oral or written, between the parties hereto with respect to the subject matter hereof. This Agreement may not be amended orally, but only by an agreement in writing signed by each of the parties hereto.

(f) Section Headings and Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" refer to the corresponding Section of this Agreement unless otherwise specified. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

(g) Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(h) Counterparts. This Agreement may be executed in one or more counterparts, and by facsimile or other electronic transmission, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

[Remainder of this page blank; signature page follows.]

RECORDED ON 2-4-10
IN THE COMMISSIONER COURT
MINUTES OF 1-26-10

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of
the date above first written above.

FORT BEND COUNTY ~~SOCIETY SERVICES~~

By: *Robert E. Hebert*

Name: Robert E. Hebert

Title: County Judge

ATTEST:

Dianne Wilson

Dianne Wilson

County Clerk

TXU ENERGY RETAIL COMPANY LLC

By: *Kim Campbell*

Name: Kim Campbell

Title: Senior Manager, Customer Advocacy

