



Request for Proposal

for

**Energy Efficiency and Conservation Programs in Support of
CPS Energy's *FlexSTEP*SM Program**

Request for Proposal No. 7000164332

Issued: March 1, 2021

**Proposal Submission Deadline: April 30, 2021 by 3:00 p.m. (Central
Time)**

**CPS ENERGY
P.O. BOX 1771
SAN ANTONIO, TEXAS 78296-1771
www.cpsenergy.com**

I. PURPOSE

A. STATEMENT OF INTENT

The City of San Antonio, acting by and through its City Public Service Board (“**CPS Energy**”) issues this global Request for Proposal (“**RFP**”) for energy efficiency and conservation programs in support of the next phase of its award-winning Save for Tomorrow Energy Plan (“**STEP**”) program: **FlexSTEP**SM.

STEP began in 2009 to empower customers to manage their energy through energy efficiency, weatherization, demand response and the adoption of both rooftop and community solar with a goal of saving 771 Megawatts (“**MW**”). This goal was achieved early and under budget in 2019 with 845 MW in energy savings. In January 2020, the CPS Energy Board of Trustees and the City of San Antonio City Council extended the **STEP Bridge** program for an additional year with a target of 75 MW in energy savings. In January 2021, the City Council approved an additional extension until July 2022 to allow additional time to recover from COVID-19 related program impacts and continue gathering public and stakeholder input for **FlexSTEP**.

CPS Energy’s vision for **FlexSTEP** is to combine the proven and tested, award-winning **STEP** program with the forward-focused, low-carbon vision of the **Flexible Path**SM. In advance of this RFP, CPS Energy identified desired programs and technologies by seeking out a broad range of stakeholder and community feedback from multiple points of view and diverse objectives. CPS Energy is expanding the focus of **FlexSTEP** to include both energy (kilowatt-hour or “**kWh**”) and demand (kilowatt or “**kW**”) savings in our targets. In or around the Fall of 2021, CPS Energy plans to seek the CPS Energy Board of Trustees’ and the City of San Antonio City Council’s approval of **FlexSTEP**.

CPS Energy is soliciting proposals (“**Proposals**”) from qualified and experienced companies (each a “**Respondent**”) to provide responses covering multiple energy efficiency and conservation programs (collectively, the “**Programs**”) separated into two Program sections: Tried and True (“**Part A**”) and the Innovative and New (“**Part B**”). These Programs represent key components of CPS Energy’s **FlexSTEP**, which is intended to be the next step on CPS Energy’s **Flexible Path**.

Part A – Tried and True

Part A of this RFP seeks to continue support for the Tried and True programs that made the **STEP** program successful. The programs represented in Part A are the traditional energy efficiency programs that customers have grown to expect and value. These programs are time-tested and an integral component to the success of **STEP**. Programs that are in Part A will support the completion of the current **STEP Bridge** program, and then continue in support of **FlexSTEP**. Part A Programs are further detailed in the attached Scope of Services (“**SOS**”) Part A – Tried and True.



Scope of Services –
Part A - Tried and Tru

CPS Energy will separately consider Proposals for each of the following categories:

- a. Residential Programs (SOS Section 1.A.)
- b. Weatherization (SOS Section 1.B.)
- c. Commercial Programs (SOS Section 1.C.)

Program goals, budgets, and Key Performance Indicators (“**KPI**”) will be evaluated annually.

Part B – Innovative and New

Part B of this RFP seeks Innovative and New programs that represent new offerings designed to help customers save electricity through behavior modification, earn rebates for adopting new technology, lower carbon emissions, and remove participation barriers. Programs selected under Part B will be incorporated in the design of **FlexSTEP**. Responses to the **FlexPower Bundle**SM Request for Information issued in the Summer of 2020, along with public input, helped shape the categories for Part B. Part B programs are pursuant to the attached SOS # Part B – Innovative and New.



Scope of Services –
Part B - Innovative and New

Part B - Innovative and New: CPS Energy is seeking Proposals for any of the following type of programs:

- a. Behavior Based Programs (SOS Section 1.A.)
- b. Technology Based Programs (SOS Section 1.B.)
- c. Equity and Market-Specific Solutions (SOS Section 1.C.)
- d. Carbon Reduction-Focused Solutions (SOS Section 1.D.)
- e. Cutting Edge and Other New Ideas (SOS Section 1.E.)

Program goals, budgets, and KPIs will be evaluated annually.

Respondents may elect to participate in either Part A, Part B, or both. Evaluation and selection of Proposals under Part A will be independent of the Proposals submitted under Part B. CPS Energy and the selected Respondent(s) will develop and execute a Statement of Work (“SOW”) based on the applicable SOS.

We will generally assess all the submissions across CPS Energy’s enterprise **Guiding Pillars** and **Foundation**:



CPS Energy’s **Guiding Pillars** of **Reliability**, **Customer Affordability**, **Security**, **Safety**, **Environmental Responsibility**, and **Resiliency**, built on a **Foundation** of consistently remaining **Financially Responsible**, are at the forefront of our strategies, processes and decision making. Our customers and our community are our key stakeholders, and we are committed to listening to their ideas, hearing their concerns, and continually receiving their feedback to make actionable decisions. Based on multiple surveys we have conducted, we know that having **Reliable** and **Affordable** power is important for our customers. CPS Energy also relies on an actively-caring safety culture that protects the physical safety of our employees and customers, and provides solutions for cybersecurity challenges that the industry faces daily to ensure a more **Resilient** grid operation. **Environmentally Responsible** power generation is also a highly-rated consideration among our customers, and CPS Energy is currently proud to be a leader in both solar and wind power in Texas and the nation. Foundationally, CPS Energy will continue to make **Financially Responsible** decisions that maintain **Customer Affordability** while upholding our superior credit ratings.

B. ABOUT CPS ENERGY

CPS Energy is the nation’s largest municipally owned energy utility providing both natural gas and electric service. Acquired by the City of San Antonio in 1942, CPS Energy serves more than 800,000 electric customers and 340,000 natural gas customers in and around San Antonio (1,515 square mile service area). CPS Energy is governed by a five-person Board of Trustees, consisting of the Mayor of the City of San Antonio and four citizens representing the four geographical quadrants of the City of San Antonio. Information about CPS Energy’s history, operations and management is available on www.cpsenergy.com.

C. CONTACT INFORMATION, QUESTIONS AND ANSWERS

Any inquiries from Respondents shall be submitted through the question & answer feature within the CPS Energy Supplier Management System portal (<https://cpsenergy.diversitycompliance.com>).

D. RESTRICTIONS ON COMMUNICATIONS

Respondents are prohibited from communicating with CPS Energy employees, representatives, staff, or Board Members regarding this RFP during the period in which submittals have been solicited or are being evaluated (other than the Procurement Agent identified in herein in the designated manner), with the exception of pre-submittal meetings open to all Respondents or responses to questions posed during interviews scheduled after responses are received and opened. Restricted communication includes, but is not limited to, “thank you” letters, phone calls, emails, and any contact that results in the direct or indirect discussion of the RFP or submitted Proposals. Violation of this provision by Respondents or their agents may lead to disqualification of the Respondent’s Proposal.

E. RFP SCHEDULE

CPS Energy will make a concerted effort to maintain the schedule below but reserves the right to revise the schedule based on CPS Energy’s business needs.

<u>Milestone</u>	<u>Date</u>
RFP Issuance	March 1, 2021
Non-Mandatory Pre-Bid Meeting via Webex	March 15, 2021 at 10:00 am CST Webex Link
Deadline for Respondent Questions	By 3:00 p.m. (Central time) on March 23, 2021
CPS Energy Responses to Submitted Questions	By 5:00 p.m. (Central time) on April 6, 2021
<u>Respondent Proposals Due</u>	<u>By 3:00 p.m. (Central time) on April 30, 2021</u>
Part A - Proposed Contract Commencement	August 2021
Part B - Proposed Contract Commencement	February 2022

F. AMENDMENTS TO SOLICITATION

CPS Energy may amend this RFP. If this RFP is amended, all terms and conditions that are not amended remain unchanged. **Any proposal that does not provide all information requested in**

this RFP may be disqualified. CPS Energy, however, may waive irregularities in any proposal at its sole discretion. Further, CPS Energy reserves the right to make no awards, and to make multiple, concurrent, or exclusive awards. CPS Energy reserves the right to request additional information from any Respondent as is deemed necessary to properly evaluate each Proposal. Any requests for additional information made by CPS Energy prior to selecting one or more Proposals for negotiation of a best-and-final-offer (“BAFO”) shall be made in the form of questions submitted to all Respondents. However, requests for information during the BAFO stage of negotiations shall be specific to the selected Respondent(s).

G. REQUIREMENTS FOR PARTICIPATION

Participation in the Non-Mandatory Pre-Bid meeting on the date and time indicated above is strongly recommended but not required in order to be considered for award.

II. PROPOSAL

A. PROPOSAL SUBMISSION

1. Proposal Format. Respondent must submit the following electronic files:
 - a. **Technical Proposal** (Section II(B) below), a single, text-searchable PDF (portable document format, non-zipped) document;
 - b. **Bid Submission Supplement** (Section II(C) below), a PDF form available below or may be downloaded from the home page of the CPS Energy Supplier Management System portal (under “CPS Energy Bidding Documents” at <https://cpsenergy.diversitycompliance.com>);
 - c. **Safety Submittal** (Section II(D) below), a single, text-searchable PDF document;
 - d. **Financial Submittal** (Section II(E) below), a single, text-searchable PDF document;
 - e. **Statement of Work** (Section II(F) below), a single, text-searchable PDF document;
 - f. **Cost Proposal** (Section II(G) below), a text-searchable PDF (portable document format, non-zipped) document; and
 - g. **Contract Terms & Conditions** (Section II(H) below), a Microsoft Word (or compatible) document, with comments if any, with tracked-changes enabled.
2. Proposal Submission Requirements.
 - a. All components of the Proposal must be submitted electronically in the CPS Energy Supplier Management System portal

(<https://cpsenergy.diversitycompliance.com>) on or before the RFP Proposal Due Date identified in the RFP Schedule above.

- b. CPS Energy will evaluate the Respondent's Proposal and the Respondent's ability to satisfactorily perform services contemplated under the applicable SOS. Proposals not meeting all requirements are subject to rejection.
- c. Additional Requirements and Terms and Conditions related to Proposal Submissions can be found below in Addendum A.



Addendum A -
Additional Proposal R

B. TECHNICAL PROPOSAL

Unless otherwise stated, all requirements in this section apply to Proposals under Part A and Part B.

1. Table of Contents

A table of contents of all sections, figures, exhibits and tables of the Proposal, preferably bookmarked (or tabbed) on the PDF of the submitted Proposal. The bookmarks (tabs) in the submitted Proposal should match up with the numbering of the Proposal Submission Requirements listed in the RFP.

2. Cover Sheet

The Cover Sheet shall contain the following:

- a. The solicitation number;
- b. The name, address, telephone number, and email address of the Respondent; and
- c. The names, titles, and contact information of the person(s) authorized to make representations on Respondent's behalf with CPS Energy.

3. Summary

- a. A brief summary of the major facts or features of the Proposal, including any conclusions, assumptions, and recommendations the Respondent desires to make.
- b. For Part B, Innovative and New Proposals: Respondent shall provide specific reasoning, approaches and examples of how and why the proposed Program(s) provide new or innovative solutions to CPS Energy customers and the existing energy efficiency portfolio.

4. Company/Firm Overview

- a. Company Overview, Experience and Qualifications. The name and description of the Respondent.
 - i. For Part A, Tried and True Proposals: a description of the Respondent's operational history which reflects the Respondent has been actively performing the Services for a minimum of three (3) consecutive years.
 - ii. For Part B, Innovative and New Proposals: a description of the Respondent's operational history which reflects the performance of similar services for other utilities or energy service providers.
 - iii. For both Part A and Part B: provide information demonstrating the qualifications and resources the Respondent currently has available to provide the proposed services, including a description of all resources that will be used.
- b. Location. The location of the Respondent's headquarters and branch locations that will have project team members assigned to CPS Energy.
- c. References. A minimum of three (3) references from different companies, where Respondent has provided the same or similar services as those identified in this RFP. Respondent shall include for each reference submitted:
 - i. The company name;
 - ii. Company address;
 - iii. Contact person's name and phone number;
 - iv. A brief description of the services performed by the Respondent;
 - v. Evidence of Respondent achieving performance goals; and
 - vi. Evidence of Respondent meeting required schedule;

In addition to the list provided, CPS Energy reserves the right to independently contact other companies with which the Respondent has engaged in a business transaction.

Respondents currently providing services to CPS Energy should provide information from other clients.

- d. Local Presence. If the Respondent has offices within the San Antonio metropolitan area, indicate the name, type (headquarters, branch, etc.), address, telephone number, number of employees, and the general nature of business undertaken at each San Antonio area location.
- e. Environmental Sustainability Practices. CPS Energy is dedicated to environmentally conscious practices that lead to the betterment of our community. To that end, CPS Energy prefers to purchase products and materials,

where feasible, that demonstratively minimize the harmful effects to the environment from their production, transportation, use and / or disposition. This is aligned to our belief that the focus on improving our overall environmental footprint benefits our community and our customers. Please provide information regarding Respondent's environmental sustainability practices, if any.

5. Program Delivery Capabilities

- a. Respondent Statement of Intent. Respondent shall complete the following Respondent Statement of Intent to signify which program(s) Respondent intends to submit a Proposal(s) for consideration.



Respondent
Statement of Intent.doc

- b. Program Category Details. For Part A and Part B, Respondent shall provide information and details for each program identified in their Respondent Statement of Intent.
 - i. Implementation Plan. Respondent shall provide their proposed implementation plan for each program offered, to include:
 - a) The number of people on the implementation team. Provide a list of the project team members on the implementation team and include their related qualifications and experience;
 - b) Subcontractors to be used for any implementation aspect, if applicable. Identify all Subcontractors and their roles if applicable;
 - c) Licensing required for sub-contractors and trade allies to participate in programs, if applicable;
 - d) If program includes installation of equipment or measures in customer homes, a list of contractors (including any installation sub-contractors), if applicable;
 - e) Process for commissioning and verification of installation and quality assurance inspection, if applicable;
 - f) Recommended procedures to inspect and verify measure installation, quality assurance and quantified energy savings;
 - g) Processes and procedures regarding safety and health measures taken to ensure the safety of customers, contractors and sub-contractors. Describe any additional processes and procedures in place to address COVID-19; and

- h) For each program year, an annual breakout of incentives to customers and installed equipment costs in relation to total program budget (as percentages). Provide an estimated Utility Cost Test (UCT) cost-effectiveness score for each proposed program. Also provide Participant Cost Test (PCT) and Total Resource Cost Test (TRC). Also provide the assumed effective useful lifetime (EUL) for each program.
- ii. Feasibility. For Part B, Respondent shall provide an overview of their proposed Program(s) to include:
 - a) Market readiness of the product or solution; and
 - b) Customer adoption plan to include marketing, expected customer adoption rates, and estimated scale of deployment.
- iii. Project Management Plan. For Part A and Part B, Respondent shall provide a project management plan for each program identified in their Respondent Statement of Intent, to include:
 - a) An overview of the management plan that would be utilized in implementing the proposed programs and the average time for implementation, including implementation workday estimates, both for CPS Energy and Respondent;
 - b) Resumes and qualifications of the key project team anticipated to be assigned to the CPS Energy project, including an organizational chart of the project team. Specify the approximate percentage of time each project team member will be available for this project, and, if necessary, explain why the project team member possesses the qualifications to perform the proposed position. Provide an overview of general staffing requirements (including expected job count and work functions) and whether Respondent intends to open or maintain a local office;
 - c) Facilities required to support on-site personnel, including office space, office equipment, computing equipment, networking facilities, etc.;
 - d) Any requirements identified by Respondent as CPS Energy responsibilities; and
 - e) A detailed schedule showing start date, ramp up rates, targets and milestones.
- iv. Marketing and Outreach Plan. For Part A and Part B, CPS Energy reserves the right to coordinate, implement and approve all marketing activities. Specific and final marketing and outreach plans will be defined with CPS Energy during contract negotiations. Respondent shall provide

information for each program identified in their Respondent Statement of Intent, to include:

- a) Description of the marketing and outreach strategies required to recruit participants and meet targets;
- b) Eligibility criteria for each program and how customers will be contacted and selected/rejected for participation; and
- c) Any marketing assistance Respondent expects CPS Energy to provide such as customer lists, customer billing records, etc.

v. Customer Obligations & Customer Service Plan. For Part A and Part B, Respondent shall provide information for each program identified in their Respondent Statement of Intent, to include:

- a) Details of all CPS Energy customer obligations necessary for participation. Include any share of the cost of the installed measure, and other fees or costs for customer participation;
- b) All written or implied warranties provided to customers regarding quality of materials and installation; and
- c) Customer database platform, and process to track and report customer information to CPS Energy. CPS Energy must know how and where data is stored and queried. Describe the data fields captured and how data is used by Respondent. Detail the level of integration required with CPS Energy's billing and customer systems. Describe how Respondent will validate CPS Energy customers and associated accounts and customer attributes.

vi. Commitments Towards the City of San Antonio. For Part A and Part B, Proposals will be evaluated, in part, based on economic development commitments towards the City of San Antonio that may include, but are not limited to, the creation of new local jobs, capital investment in San Antonio, mentoring small businesses, and educational funding. A commitment in either or all these categories will be considered, as well as any other economic development commitment that may be proposed.

- a) Employment: Provide the number of full-time, permanent jobs that your company intends to create in San Antonio and should be considered in the evaluation of your Proposal. Also, provide details regarding the types of jobs (i.e., roles/functions/titles) and the number of positions for each respectively by year. For the purposes of this analysis, a full-time, permanent job shall be equivalent to two thousand eighty (2,080) straight-time paid hours in a fiscal year AND be a job where benefits are available to the employee.

- b) Investment: Provide details regarding permanent capital investment (i.e., type and nature) that your company intends on making in San Antonio (i.e., office lease, warehouse lease, land purchase, etc.) and any timeline associated with these investments.
 - c) Local Business Mentoring Program: Provide details describing a mentoring program that provides developmental assistance and business opportunities for small, local and diverse/minority-owned businesses in the San Antonio area as part of the project.
 - d) Educational Funding: Provide details regarding educational funding and the nature or type of that funding that are included in this Proposal. The nature or type of educational funding should be focused on opportunities to develop clean technology education at the primary and secondary school level with emphasis on STEM (science, technology, engineering, mathematics) programs.
- vii. Environmental Attributes & Non-Energy Benefits. For Part A and Part B, Environmental Attributes and Non-Energy Benefits associated with the project will accrue to the ownership and beneficial use of CPS Energy. Respondent shall provide information for each program identified in their Respondent Statement of Intent, to include:
 - a) A statement that all emissions savings and environmental attributes associated with the project(s) will accrue to the ownership and beneficial use of CPS Energy; and
 - b) Any non-energy benefits that will be realized from program participation over time. These could include benefits associated with quality of life, carbon mitigation, and incidental benefits to businesses or customers.
- viii. M&V Data Reporting and General Reporting Requirements. For Part A and Part B, the timeliness, accuracy and reliability of data generated by the Programs are critical to their success. CPS Energy is required to substantiate energy savings that help it to reach its energy savings targets that are set each fiscal year. Respondent shall provide information for each program identified in their Respondent Statement of Intent, to include:
 - a) Access to a searchable database of customer projects including measure(s) installed, model number and serial number of equipment, kW and kWh savings, payment status, rebate amount, payment or cost of measure, address of installation, council district of installation, name of the organization that installed the measure and any other pertinent information. Specify the data Respondent requires of CPS Energy for

their proposed project to be measured and evaluated. In addition, the Respondent should describe how this required data should be securely transferred between the Respondent and CPS Energy; and

- b) Savings estimates and assumptions by showing all engineering calculations based upon CPS Energy's Technical Guidebook, located in the SOS documents. This can be either a separate Excel file with formulas in-tact (no hard-entered numbers) or a narrative that shows how Respondent determined savings estimates and assumptions specific to CPS Energy's service territory. All saving sources referenced must be cited. In addition, provide the ratio of Reported to Measurement & Verification ("**M&V**") savings for prior similar projects.

- ix. Communication and Customer Interaction Requirements. At CPS Energy, customer service, satisfaction, and experience are top priorities. For Part A and Part B, Respondent shall provide a customer interaction plan for each program identified in their Respondent Statement of Intent, to include:

- a) Call Center Support: Details regarding customer support staffing and management, to include the following:
 - i. Service performance standards;
 - ii. Program and customer support guidelines including availability during business hours, after-hours, weekend, holiday(s) and bilingual assistance;
 - iii. Business continuity processes and procedures; and
 - iv. Procedures and timeline for resolving and escalating customer complaints to include claims process, if applicable.
- b) Community/Customer Interaction: At times, CPS Energy may require Respondent to represent program(s) via in-person, digitally, etc. for customer informational purposes. Please include additional plans and processes for in-person standards outlined in Section 5.b.iii.IV "Marketing and Outreach Plan" from above.
- c) Customer Satisfaction Reporting: Provide an outline of measures and reporting methods Respondent will take to ensure a high customer satisfaction level. This can include transactional surveys or other comparable means.
- d) Weatherization Only: Please include how Respondent will adhere to guidelines and plans outlined in the Weatherization Document found in the Tried and True SOS (Section 1.2).

6. Quality Control and Citations

- a. Quality Control. Respondent shall provide:
 - i. A complete copy of Respondent's Quality Control manual;
 - ii. A complete copy of Respondent's Quality Assurance program; and
 - iii. A statement describing whether QA/QC manuals are qualified by ISO 9001 or any other standard.
- b. Citations. A list of any citations, notices of violation, legal proceedings, fines, or project terminations that any Federal, State, local regulatory agency or department, corporation, or individual has issued to or against the Respondent, or any employee of the Respondent while that employee was working for the Respondent, during the past three (3) years ("**Citations**"). For each Citation, state the nature of the Citation and the date of its resolution, together with the contact person for the Respondent who could address any questions about the matter. If there are no Citations, Respondent shall provide such a statement.

7. Licenses

Provide a list of Texas licenses and certificates held by the Team Members and include a statement that all other licenses and certificates required will be obtained prior to award.

C. BID SUBMISSION SUPPLEMENT

The Bid Submission Supplement package includes the Business Questionnaire, Responsible Respondent Questionnaire, Disclosure, and Subcontracting Form. Each section must be completed according to their individual instructions. CPS Energy reserves the right to reject responses with incomplete Bid Submission Supplement sections. The Bid Submission Supplement package is embedded below or may be downloaded from the home page of the Supplier Management System portal (<https://cpsenergy.diversitycompliance.com>).



Bid Submission
Supplement.pdf

1. Business Questionnaire

Respondent shall complete and submit the Business Questionnaire. Business Questionnaires shall only be considered valid for one (1) year from classification date and must be updated with a new Business Questionnaire beyond such one (1) year period.

2. Responsible Respondent Questionnaire

Respondent shall complete and submit the Responsible Respondent Questionnaire.

3. Disclosure

Respondent shall complete and submit the Disclosure.

4. Subcontractors, Subsidiaries & Multiple Parties

Respondent shall complete and submit the Subcontracting Form.

D. SAFETY SUBMITTAL

Responses are only needed if the work is on premise at customers or CPS Energy locations. For Part A and Part B, Respondent shall provide the following safety records and training program documents:

1. An electronic copy of Respondent's safety manual¹
2. 2020 - Statement of worker compensation EMR²
3. 2019 - Statement of worker compensation EMR^{Error! Bookmark not defined.}
4. 2018 - Statement of worker compensation EMR^{Error! Bookmark not defined.}
5. 2020 - OSHA 300 & 300A Injury/Illness Logs³
6. 2019 - OSHA 300 & 300A Injury/Illness Logs^{Error! Bookmark not defined.}
7. 2018 - OSHA 300 & 300A Injury/Illness Logs^{Error! Bookmark not defined.}
8. Complete and include the ***Respondent Safety Information Questionnaire***, embedded here:



Respondent Safety
Information Questionr

Respondents failing to submit one or more of the documents requested above may be disqualified.

E. FINANCIAL SUBMITTAL

Respondent shall submit the most recent three (3) complete fiscal years of the following audited financial statements and Financial Questionnaire, embedded below:

1. the balance sheet;
2. income statement;

¹ Respondents with safety manuals that have not been updated to meet current Occupational and Health Administration ("OSHA") standards within the last twelve (12) months may be disqualified.

² It is preferred that Respondent's Experience Modification Ratings ("EMR") be presented on National Council on Compensation Insurance ("NCCI") letterhead. Respondents with an EMR > 1.3 may be disqualified. Respondents with an EMR > 1.3 should explain in detail any extenuating circumstances.

³ Pursuant to OSHA standards.

3. cash flow statement;
4. statement of shareholder equity;
5. statement of comprehensive income; and
6. all related notes.

If Respondent does not have audited financial statements, their last three complete fiscal years of reviewed financial statements and calendar year tax returns may be submitted.



The Financial Questionnaire is also located on the home page of the CPS Energy Supplier Management System portal (under “CPS Energy Bidding Documents” at <https://cpsenergy.diversitycompliance.com>).

If Respondent provided a Financial Submittal in response to a separate CPS Energy solicitation conducted in the current calendar year, another submittal is not required. Respondent shall simply reference the bid Collective number in their response to this solicitation and the same Financial Submittal information will be utilized.

F. STATEMENT OF WORK

For Part A and Part B, as applicable, CPS Energy and the selected Respondent(s) shall develop and execute an SOW. If Respondent has an SOW developed (based on the applicable SOS), Respondent may submit the SOW with its Proposal for CPS Energy’s consideration.

G. COST PROPOSAL - PRICE/FEES/COMPENSATION

This section requests the Respondent’s price and fees for providing its proposed services:

1. **Part A Only, Commercial and Residential Programs Only:** Provide a performance-based pricing system based on one rate (\$/NCP kW at generator) for achieving the annual program targets at a Utility Cost Test (UCT) \geq 2.0.
2. **Part A Only, Weatherization Program Only:** Provide a performance-based pricing system based on one rate (\$ per home) for the target number of homes weatherized at a Utility Cost Test (UCT) \geq 0.8.
3. **Part A Only:** Provide three-year pricing Proposal based on year one targets, i.e. Respondents should assume year-two and year-three targets are similar to year one.
4. **Part A Only:** Respondent shall assume a 20% monthly holdback of implementation fees to be earned back at year end based on achieving KPI performance metrics.
5. **Part B Only:** Provide detailed pricing to include a breakdown of start-up costs, support and maintenance costs, customer incentive costs and any other relevant costs for the proposed services. Please include any key assumptions. Our goal for new programs will be to achieve a positive cost-benefit by the third year of deployment.

6. **Part B Only:** Provide a three-year pricing proposal based on forecasted adoption.
7. **For Part A and Part B:** Detail any minimum fee amounts and the methods of fee calculations. All fee arrangements must clearly state the type and amount of expenses and costs CPS Energy would incur relating to Respondent's proposed services.
8. **For Part A and Part B:** CPS Energy expects Respondent to achieve KPIs each contract year. The KPIs are based on achieving targets for NCP kW, kWh, UCT, Customer Satisfaction and number of homes (Weatherization). Refer to annual kW savings targets in table(s) found in the SOS documents, Section 2: Program Levels.

The following assumptions document will be useful for calculating some of the parameters such as UCT.



Parameters and
Assumptions.docx

H. **CONTRACT TERMS & CONDITIONS**

1. **Existing Agreement/Terms and Conditions**

If Respondent has a current, non-expired Master/Services Agreement or Terms and Conditions with CPS Energy with an Effective Date of February 1, 2016 or later, submit a copy of the relevant Agreement or Terms and Conditions. CPS Energy reserves the right to negotiate a new Agreement or Terms and Conditions other than that provided by or referenced by Respondent.

2. **Exceptions**

If Respondent does not have a current, non-expired Master/Services Agreement or Terms and Conditions with CPS Energy with an Effective Date of February 1, 2016 or later, any and all exceptions to the terms and conditions embedded below must be clearly acknowledged and inserted in "tracked-changes" (red-lined) format using Microsoft Office or compatible and must accompany the Proposal. If there are no exceptions, Respondent shall submit the completed and signed document.



10644175_MA_FlexSte
p.docx

In addition, any and all exceptions to the SOS, SOW, requirements, or specifications of the proposed contract(s) must be clearly acknowledged and inserted in "tracked-changes" (red-lined) format using Microsoft Office or compatible and must accompany the Proposal.

III. CONTRACT EVALUATION AND AWARD

A. EVALUATION FACTORS

1. In evaluating Proposals for both Part A and Part B submissions, CPS Energy, in its sole discretion, will give weight in order of most-to-least important to the evaluation criteria generally listed below:
 - The overall cost and value of program(s);
 - Respondent's ability to meet CPS Energy's requirements for Program Delivery Capabilities and Quality Control;
 - Safety records and training program;
 - Respondent's Company and Firm Overview to include experience and qualifications to perform the Services and references;
 - Economic Development;
 - The financial soundness of Respondent, and;
 - Ability to adhere to CPS Energy IT Security Requirements (see Addendum B located in the embedded agreement in Section II.H.2 above)
2. Economic Development. Respondents classified as a local business in accordance with the zip codes defined within the San Antonio metropolitan area, and small, disadvantaged, minority-owned, woman-owned, service-disabled, veteran-owned, HUBZone businesses, will receive a preference in the evaluation process.

B. CONTRACT AWARD

1. Policies & Procedures. This procurement will comply with applicable CPS Energy procurement policies and procedures. The evaluation factors outlined above shall be applied to all eligible, responsive Proposals. Qualifying Proposals will be assessed in order to identify the best value to CPS Energy. CPS Energy may or may not choose to award a contract under this solicitation.
2. Investigations. CPS Energy may conduct investigations, as deemed necessary, to assist in the evaluation of any Proposal and to establish the responsibility, qualifications, and financial ability of the Respondent, proposed subcontractors, and other persons and organizations who may perform Services or provide Goods or Software. The Respondent shall furnish, upon request and in a timely manner, all such data and information requested for this purpose.
3. Award.
 - a. CPS Energy will evaluate all Proposals based upon the evaluation criteria set forth in this RFP and as further clarified throughout the evaluation process. Based upon CPS Energy's initial evaluation of the Proposals, CPS Energy may make a final decision for award or may prepare a short list of apparent qualified Respondents.

CPS Energy may select one or more potential Respondents as candidates for a contract award.

- b. CPS Energy may or may not award a contract to a Respondent after analysis and evaluation of the Proposals.
 - c. CPS Energy may evaluate Proposals and award a contract without discussions with Respondents (except for necessary clarifications). Therefore, the Respondent's Proposal should contain the Respondent's best terms from a price and technical standpoint. CPS Energy reserves the right to conduct discussions if CPS Energy later determines them to be necessary.
 - d. CPS Energy will evaluate the Proposals to determine which, in CPS Energy's sole judgment, represents the best value for the Services, Goods, or Software requested.
 - e. The award under this RFP does not in and of itself create a binding agreement between CPS Energy and the successful Respondent. An agreement including all terms, conditions, exhibits, and attachments must be executed by both CPS Energy and the successful Respondent in order to create a binding enforceable agreement between CPS Energy and the successful Respondent. No Respondent may rely upon the award of a contract as a promise by CPS Energy to enter an agreement, and no Respondent may rely upon any written or oral statement(s) or representation(s) as to the award of a contract or intention to enter an agreement made by any CPS Energy personnel. Subsequent to CPS Energy granting an award, it is contemplated that there may be a period of negotiations to finalize a contract between the parties.
 - f. CPS Energy reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the Respondent specifies otherwise in the Proposal.
4. Short List. If CPS Energy determines that the number of Proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, CPS Energy may limit the number of Proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated Proposals.
5. Unbalanced Pricing. CPS Energy may determine that a Proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A Proposal may be rejected if CPS Energy determines that the lack of balance poses an unacceptable risk to CPS Energy.

6. Preservation of Contract Information. If this solicitation results in an award of a contract, the award and contract may be subject to Texas Government Code, Chapter 552, Subchapter J.
7. Board Approval. While preliminary selection, due diligence and even detailed negotiations and other processes could transpire to ensure critical progress is made, any action taken to award a contract by CPS Energy may be subject to approval by the CPS Energy Board of Trustees and may not be final until such approval process has been completed. No payment can be made for action taken or Services started prior to the execution of a contract by both parties.

SCOPE OF SERVICES – PART A: TRIED AND TRUE

1. **Scope of Services.** CPS Energy seeks Proposals from Respondents to provide one or more of its services to administer CPS Energy's traditional energy efficiency and conservation initiatives (the "**Services**"). These initiatives represent key components of CPS Energy's STEP Bridge program and **FlexSTEP**SM Program, which are important programs supporting CPS Energy's **Flexible Path**SM strategy. Capitalized Terms used in this SOS have the same meaning as defined in the RFP.

CPS Energy is seeking an initial term of one year with a renewal term(s) contingent on the approval of the **FlexSTEP** Program, achievement of program targets, and performance. Based on this SOS, CPS Energy and the successful Respondent(s) shall develop and execute an SOW. The initial term will commence on approximately August 1, 2021, and will terminate, subject to the terms of the Agreement.

The **FlexSTEP** Program is the extension of CPS Energy's vision of energy efficiency and conservation programs to include energy (kWh) and demand (kW) savings in our targets. Part A of this RFP seeks to continue support for the Tried and True services that made the STEP program successful. Part A will support the completion of the current STEP Bridge program and then continue in support of **FlexSTEP** Program.

The Residential and Commercial Programs listed in this document represent existing programs in our portfolio.

- For detailed information on CPS Energy's energy efficiency and conservation programs, past performance, and cost effectiveness, please see CPS Energy's STEP reports here: <http://www.sanantonio.gov/sustainability/Environment/SaveForTomorrowReports.aspx>
- For details on rebates currently offered for the residential and commercial sectors, reference applicable programs identified by the (STEP) notation here: <https://www.cpsenergy.com/savenow>
- For the most recent Technical Reference Manual summarizing CPS Energy's M&V standards and practices, please see the CPS Energy Technical Guidebook here:



2020-2021 CPS
Guidebook.pdf

A. Residential Programs.

1. Home Efficiency. Targets a wide range of energy efficiency measures in existing homes. Rebates are offered for qualifying insulation, pool pumps and other measures to reduce energy consumption in existing homes.

2. Heating, Ventilation, and Air Conditioning (“HVAC”). Provides customers with rebates for the purchase of eligible central air conditioners, heat pumps, and room air conditioners.
3. New Home Construction. Offers developers incentives to build homes expected to consume at least 15% less electric and gas energy than a home built to the requirements of IECC 2018, the current City of San Antonio building code. This does not preclude offering a higher or lower rebate for a higher or lower standard so long as it exceeds the current code. This program is part of CPS Energy’s collaboration with Build San Antonio Green to provide a consistent approach to incentivizing efficient new residential construction.
4. No Cost Residential Home Assessment. Provides customers with energy-saving products via an in-person home energy assessment or through direct installation kits mailed to customer homes, which may include LED lighting, low-flow showerheads, faucet aerators, water heater pipe insulation and WiFi programmable thermostat installation
5. Programs Focused on In-School Education. Incorporates energy efficiency into the classroom by equipping teachers, students and parents with in-class curriculum and take-home kits full of energy efficient products.
6. Cool Roof. Offers two-tiered incentives for homeowners and low-income customers to install qualified ENERGY STAR®-certified roofing systems or coatings, which reduce the energy required to cool a home.
7. Retail Lighting In-Store Discount for Low Income Areas. Partners with retailers located in and around under-served communities to provide point-of-purchase rebates on specified LED lightbulbs.

B. Weatherization.

Weatherization (Casa Verde). CPS Energy’s Casa Verde Program serves limited-income residential customers with zero cost audits and subsequent installation of certain energy efficiency measures. This program seeks to install a comprehensive set of weatherization measures at each qualified home such as, but not limited to, attic insulation, wall insulation, weather-stripping and caulking, LED lights to replace incandescent light bulbs, duct sealing and WiFi Programmable thermostat installation. Due to the nature of this program, it has independent cost effectiveness targets and some alternative evaluation criteria from the other programs. For more information on the current weatherization program (entitled Casa Verde) visit the following website: <https://residential.savenow.cpsenergy.com/casaverde>

The document embedded below provides further guidelines and specifications for the Weatherization program.



Weatherization
Guidelines & Specifics

C. Commercial Programs.

1. Commercial Rebates. Offers customers energy assessments and rebates for installation of lighting & lighting controls, HVAC, chillers, refrigeration, and other energy-saving measures.
2. Schools & Government Agencies. Offers incentives to reduce energy use in schools and government agencies through benchmarking, technical assistance, energy master planning, installation of lighting & lighting controls, HVAC and HVAC tune-ups, as well as other energy-saving measures.
3. Small Business Program. Offers incentives and services for energy efficiency measures such as lighting, WiFi programmable thermostats and other energy savings measures for small business customers (<100 kW demand).
4. Building Optimization Programs. Offers contractor-led incentives for building optimization, which includes tools and strategies to enhance a facility's operational efficiency.

2. Program Levels.

Proposed Targets (kW & kWh). CPS Energy is seeking proposals based on annual non-coincident peak kW and kWh targets, as detailed in the chart below. Respondent will propose plans and budgets for each program identified in their Program Category Proposal Statement of Intent. These represent first year targets. Targets will be finalized in the SOW and adjusted every year according to the **FlexSTEP** goals. CPS Energy is determining the final scale of **FlexSTEP** goals and should the **FlexSTEP** Program be approved, program targets will be determined by CPS Energy and incorporated into a final agreement.

First Year Targets	kW (NCP)	kWh	Cust Sat*	UCT	Target Homes
Residential Programs	14,300	26,760,000	90%	1.8	N/A
Home Efficiency	2,300	2,560,000			
Heating, Ventilation, and Air Conditioning (“HVAC”)	7,100	15,380,000			
New Home Construction	2,400	2,780,000			
Programs Focused on In-School Education	400	1,000,000			
No Cost Residential Home Assessment	600	2,270,000			
Cool Roof	100	40,000			
Retail Lighting In-Store Discount for Limited-Income Areas	1,400	2,730,000			
Weatherization	13,200	14,150,000	90%	0.8	3600
Commercial Programs	21,700	106,850,000	90%	1.8	N/A
Commercial Rebates	8,400	36,950,000			
Schools & Government Agencies	3,600	12,700,000			
Small Business Program	8,000	39,100,000			
Building Optimization Programs	1,700	18,100,000			

*Customer Satisfaction scores will be conducted and determined through a Third-Party survey coordinated by CPS Energy.

3. **Validation via Application Program Interface.** Respondent must provide a detailed plan and timeline to implement a back-end portal allowing for verification of CPS Energy customer eligibility for any residential and commercial programs in real time.
4. **M&V Data Reporting and General Reporting Requirements.** CPS Energy should have the ability to generate ad-hoc reports or receive data file of all projects within 24 hours.

Company shall provide reports including:

- A. Weekly automated reports
 1. Projects completed;
 2. Projects in queue;
 3. Estimated savings obtained cumulatively (current year) and daily;
 4. Estimated budget spent; and
 5. Count of each measure.
- B. Monthly automated reports
 1. Count of projects completed;
 2. Projects in queue;
 3. Average time to complete each measure;
 4. Average cost of each project;
 5. Average savings from each project;
 6. Average cost per kW;
 7. Average cost per kWh;
 8. Count of projects by council district;
 9. Current year cumulative projects;
 10. Current year cumulative savings;

11. Current year cumulative projects by council district;
12. Count of different contractors used;
13. Number of customers impacted month;
14. Current year count of unique customers impacted
15. Number of trade allies, number of employees, and projects completed per trade ally;
and
16. Other reasonable metrics as requested.

C. Quarterly reports

1. Count of projects completed;
2. Count of projects by council district;
3. Current year cumulative projects;
4. Current quarter cumulative projects;
5. Current year cumulative savings;
6. Current quarter cumulative savings;
7. Current year cumulative projects by council district;
8. Current quarter cumulative projects by council district;
9. Count of different contractors used cumulative;
10. Number of customers impacted cumulative;
11. Current quarter count of unique customers impacted;
12. Count of trade allies in the program, including number of local, small and/or diverse businesses
13. Other reasonable metrics as requested

D. Key Performance Indicators – Monthly updates regarding progress on KPIs.

1. Customer Satisfaction Score, based on a third-party survey of program participants
2. UCT Score;
3. Estimated saved kW
4. Estimated saved kWh
5. Number of homes completed (Weatherization)

SCOPE OF SERVICES – PART B: INNOVATIVE AND NEW

1. **Scope of Services.** CPS Energy seeks Proposals from Respondents to provide one or more innovative and new energy efficiency and conservation programs (“**Innovative and New Programs**”). Adding to CPS Energy’s existing portfolio of Tried and True Programs (Part A), this Part B represents the new and innovative component of CPS Energy’s **FlexSTEPSM** Program. Capitalized Terms used in this SOS have the same meaning as defined in the RFP.

Based on this SOS, CPS Energy and the selected Respondent(s) shall develop and execute an SOW. The initial term will commence on or around February 1, 2022, and will terminate, subject to the terms of the Agreement, upon achieved program target goals.

This Part B is broadly designed to encourage Respondents to propose Innovative and New Programs in the areas of energy efficiency, solar and renewable energy, demand response (summer and winter focused) and other new program offerings. These Innovative and New Programs will be offerings designed to complement our existing portfolio of Tried and True Programs by continuing to help customers save electricity through behavior modification, earn rebates for adopting new technology, and remove participation barriers to **FlexSTEP** Programs, among other benefits.

CPS Energy plans to maintain its role as a leader in Texas for energy efficiency and conservation by seeking new ideas and partners to help expand the reach and benefit of **FlexSTEP** for the San Antonio community. This procurement seeks both large and small options for Innovative and New Programs, with responses expected from large, well-known firms as well as local and small businesses.

CPS Energy’s **FlexSTEP** Program seeks to build on the success of the STEP Program with Innovative and New offerings.

- For detailed information on CPS Energy’s energy efficiency and conservation programs, past performance and cost effectiveness, see CPS Energy’s **STEP** reports <http://www.sanantonio.gov/sustainability/Environment/SaveForTomorrowReports.aspx>
- For details on rebates currently offered for the residential and commercial sectors, you may reference applicable programs identified by the (**STEP**) notation here: <https://www.cpsenergy.com/savenow>
- For the most recent Technical Reference Manual summarizing CPS Energy’s M&V standards and practices, please see the CPS Energy Technical Guidebook here:



2020-2021 CPS
Guidebook.pdf

A. Behavior Based Programs.

CPS Energy is seeking solutions that engage our residential and commercial customers by providing high engagement and low-cost ways to reduce energy consumption. These types of programs are intended to influence customer behavior through messaging, alerts, nudges or other informational means with a goal of driving year-round energy and demand savings without requiring customers to make a capital expenditure.

B. Technology Based Programs.

CPS Energy is seeking energy conservation, flexible load management and resiliency solutions to encourage our residential and commercial customers to adopt new technology and equipment in their homes, multifamily dwellings, or businesses. These types of programs incentivize customers to purchase high efficiency equipment, smart appliances/devices and/or renewable energy systems, typically requiring a capital outlay. CPS Energy is also seeking solutions for upgrading our legacy one-way pager style thermostats with WiFi programmable thermostats.

C. Equity and Market-Specific Solutions.

CPS Energy is seeking solutions to promote equity by engaging and increasing participation among hard-to-reach market segments. Examples of hard to reach segments include limited income customers, renters, small businesses, multifamily (apartments, condos, townhomes), non-profits, schools, and government institutions. CPS Energy defines limited income as households with income at or below 200% of the federal poverty level. The small business customer segment is defined as commercial accounts under 100 kW demand.

Additionally, CPS Energy is interested in proposals that facilitate partnerships with local financial institutions that can provide customers with low-cost financing options for making energy efficient improvements.

D. Carbon Reduction-Focused Solutions.

CPS Energy is committed to the ***Flexible Path*** strategy and the vision of a low carbon future. CPS Energy is seeking opportunities to help customers lower their carbon impacts. These solutions must result in energy and demand savings for customers.

E. Cutting Edge and Other New Ideas.

CPS Energy recognizes that not all solutions fit perfectly into a category. If Respondents have an innovative and new solution that does not fit in one of the identified categories above, and the solution will result in energy and demand savings for customers, CPS Energy encourages those Respondents to submit a Proposal.

2. Program Levels.

CPS Energy is seeking Proposals that help customers save energy and money. CPS Energy measures performance based on reductions of non-coincident peak kW and energy savings kWh. Firm targets have not been established for the Innovative and New Programs under **FlexSTEP**. This RFP and the SOW will assist in establishing targets. Respondent should propose plans and budgets for each Proposal. CPS Energy is determining the final scale of **FlexSTEP** goals and should the **FlexSTEP** Program be approved, program targets will be determined by CPS Energy and incorporated into a final agreement.

3. **Validation via Application Program Interface.** Respondent must provide a detailed plan and timeline to implement a back-end portal allowing for verification of CPS Energy customer eligibility for any program in real time.
4. **M&V Data Reporting and General Reporting Requirements.** CPS Energy should have the ability to generate ad-hoc reports or receive data file of all projects within 24 hours.

Company shall provide reports including:

A. Weekly automated reports

1. Projects completed;
2. Projects in queue;
3. Estimated savings obtained cumulatively (current year) and daily;
4. Estimated budget spent; and
5. Count of each measure.

B. Monthly automated reports

1. Count of projects completed;
2. Projects in queue;
3. Average time to complete each measure;
4. Average cost of each project;
5. Average savings from each project;
6. Average cost per kW;
7. Average cost per kWh;
8. Count of projects by council district;
9. Current year cumulative projects;
10. Current year cumulative savings;
11. Current year cumulative projects by council district;
12. Count of different contractors used;
13. Number of customers impacted month;
14. Current year count of unique customers impacted
15. Number of trade allies, number of employees, and projects completed per trade ally;
and
16. Other reasonable metrics as requested.

C. Quarterly reports

1. Count of projects completed;
2. Count of projects by council district;
3. Current year cumulative projects;
4. Current quarter cumulative projects;
5. Current year cumulative savings;
6. Current quarter cumulative savings;
7. Current year cumulative projects by council district;
8. Current quarter cumulative projects by council district;
9. Count of different contractors used cumulative;
10. Number of customers impacted cumulative;
11. Current quarter count of unique customers impacted;
12. Count of trade allies in the program, including number of local, small and/or diverse businesses
13. Other reasonable metrics as requested

ADDENDUM A

ADDITIONAL PROPOSAL REQUIREMENTS

1. **Definitions.** The terms set out below and used in this Addendum are defined as follow:

be appropriately numbered and identified with the name of the Respondent, the date of the Proposal, and the collective number.
2. **Language.** All Proposals must be submitted in English.
3. **Price Quotations.** All prices shall be quoted in U.S. dollars.
4. **Firm Proposal.** Each Proposal shall be firm, not subject to price escalation, and binding for 120 days from the date the Proposals are due under this RFP.
5. **Timeliness.** Respondents are responsible for submitting Proposals, and any modifications or revisions, by the date and time specified in this solicitation. Any Proposal or Proposal modification received by CPS Energy after the Proposal Due Date is considered late and CPS Energy reserves the right to accept or reject such late Proposal.
6. **Proposal Modifications.** Respondent may change or modify a Proposal before the solicitation's closing date and time (Respondent's Proposal Due Date).
7. **Format.** All text-searchable PDFs must contain documents reproduced directly from the native document (i.e., Word, Excel, MicroStation, AutoCAD). Scanned images and documents will be considered irregular and may be rejected. Respondent's Proposal shall be clearly and concisely written, neatly presented, indexed (cross-indexed as appropriate), and logically assembled as set forth in this section. All pages of each part shall
8. **Proposal Withdrawal.** Respondents may withdraw submitted Proposals by written notice at any time before a contract is awarded.
9. **Completeness of Proposal.** Unless otherwise specified in this RFP, Respondent may propose to provide any item or combination of items.
10. **Proprietary Data in Proposal.** All materials submitted to CPS Energy are subject to the Texas Public Information Act upon receipt. If a Respondent does not want proprietary information to be disclosed, each page containing proprietary information must be identified and marked **Confidential & Proprietary** at the time of submittal. CPS Energy will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, shall be determined by the Attorney General of Texas. Failure to properly identify proprietary information may result in all unmarked pages being deemed non-proprietary at CPS Energy's discretion and therefore made available to the public upon request. CPS Energy endeavors to not publicly disclose the contents of any Proposals during negotiations.
11. **Local Conditions.** By submitting a Proposal, Respondent understands and agrees that, by the Proposal due date, all

local conditions and factors affecting Respondent's Proposal will have been properly investigated and accounted for in the Proposal. No financial adjustments to Respondent's Proposal shall be permitted after the Proposal due date based on the lack of prior information or its effect on the cost (fees, expenses or otherwise) relating to the Services, Goods, and/or Software.

12. Questions related to RFP. If any prospective Respondent has questions related to the proposed RFP, including all related documents, Respondent may submit questions through the question & answer feature within the CPS Energy Supplier Management System portal (<https://cpsenergy.diversitycompliance.com>). Any interpretation of the proposed contract(s) will be made by addendum, and a copy of such addendum will be mailed or delivered to each person receiving the RFP. CPS Energy will not be responsible for, nor may Respondent rely on, any other explanations or interpretations of the proposed documents.

13. Irregularities. CPS Energy reserves the right to reject any and all Proposals and to waive minor formalities and irregularities.

14. No Liability. CPS Energy assumes no liability or responsibility for the costs incurred by the Respondents for any materials, efforts or expenses required in the preparation of Proposals or in connection with presentations or demonstrations.

15. No Warranty. CPS Energy makes no warranty, expressed or implied, with respect to the accuracy or sufficiency of the proposed contract and relating

documents or any interpretation of any facts disclosed by any preliminary investigations that may have been made by CPS Energy.

16. Taxes. CPS Energy is a municipally owned electric and gas utility and as such is a TAX-EXEMPT ORGANIZATION. CPS Energy is exempt from certain sales and use taxes with respect to the purchase price of all materials, supplies, equipment and consumables purchased under an Order, SOW or a separate contract, and which are incorporated into the work. Company shall not invoice or charge CPS Energy for such taxes and shall be provided with a Sales Tax-Exemption Certificate upon request. Failure by Company to request a Sales Tax-Exemption Certificate shall not mean that CPS Energy waives its tax-exempt status. CPS Energy shall not pay any taxes for which it is exempt.

17. Certificate of Interested Parties. Pursuant to Chapter 46 of Texas Ethics Commission Rules, if Company is awarded a contract, Company agrees to submit Form 1295, entitled "Certificate of Interested Parties" online to the Texas Ethics Commission concurrently with the execution of an Agreement. Company understands and acknowledges that the Agreement will be void if Company fails to timely file this form.

Respondent Statement of Intent

Scope of Services - Part A: Tried and True

For the Scope of Services – Part A: Tried and True, please indicate the program category(ies) Respondent intends to submit a Proposal for by checking the corresponding box(es). Proposals will be evaluated and scored by category, so please detail your plan, capabilities and pricing for each category in your Proposal.

Please select one, multiple, or all categories, as applicable:

☐ **Residential Programs**

Referenced in Part A – Section 1.A.

(Please refer to Section 2, entitled “Program Levels,” for target kW and kWh savings)

- Home Efficiency
- Heating, Ventilation and Air Conditioning (HVAC)
- New Home Construction
- No Cost Residential Home Assessment
- Programs Focused on In-School Education
- Cool Roof
- Retail Lighting In-Store Discount for Low Income Areas

☐ **Weatherization Program**

Referenced in Part A – Section 1.B.

(Please refer to Section 2, entitled “Program Levels,” for target kW and kWh savings)

- Weatherization (Casa Verde)

☐ **Commercial Programs**

Referenced in Part A – Section 1.C.

(Please refer to Section 2, entitled “Program Levels,” for target kW & kWh savings)

- Commercial Rebates
- Schools & Government Agencies
- Small Business Program
- Building Optimization Program

Scope of Services - Part B: Innovative and New

For the Scope of Services – Part B: Innovative and New, please indicate the program category(ies) Respondent intends to submit a Proposal for by checking the corresponding box(es). Proposals will be evaluated and scored by category, so please detail Respondent’s plan, capabilities and pricing for each category in the Proposal.

Please select one, multiple, or all categories, as applicable:

- ☐ **Behavior Based Programs**
Referenced in Part B – Section 1.A.
- ☐ **Technology Based Programs**
Referenced in Part B – Section 1.B.
- ☐ **Equity and Market Specific Solutions**
Referenced in Part B – Section 1.C.
- ☐ **Carbon Reduction Ideas**
Referenced in Part B – Section 1.D.
- ☐ **Cutting Edge and Other Bright Ideas**
Referenced in Part B – Section 1.E.



BID SUBMISSION SUPPLEMENT

This supplement includes four (4) separate forms that must be completed by the bidding entity:

1. **Business Questionnaire** (pages 2-3)
2. **Responsible Respondent Questionnaire** (pages 4-6)
3. **Disclosure** (pages 7-10)
4. **Subcontracting Form** (pages 11-22)

Each section must be completed according to the individual instructions within each document.

CPS Energy reserves the right to reject responses with incomplete Bid Submission Supplement sections.



CPS ENERGY BUSINESS QUESTIONNAIRE

Phone: (210) 353-2474 Website address: www.cpsenergy.com

Questions should be directed to (210) 353-2474, or e-mailed to supplierdiversity@cpsenergy.com

1. Name of business: _____

Doing business as: _____
(Other business name, if applicable)

Contact person and title: _____

2. Business mailing address: _____

City: _____ State: _____ Zip Code: _____ / _____

3. Business telephone number: (____) ____ - _____

Business e-mail address for POs, Bid Solicitations, Request for Quotations: _____

4. Check appropriate box for Type Classification:

☐ Non-Profit Organization ☐ Chamber of Commerce ☐ Federal/State/City Agency
☐ Municipality ☐ College/University Institution ☐ Corporation
☐ Historically Black College/University or Minority Institution ☐ Sole Proprietor/Partnership

Please see reverse or second page for definitions for the following questions:

5. Does your company maintain a business office in the San Antonio Metropolitan Statistical Area? ___ Yes ___ No

If yes: Address: _____

City: _____, State: _____, Zip Code: _____

6. What is the gender of the majority owner (owns at least 51% of company): ___ Male ___ Female ___ N/A

7. Size of business: (check one) ___ Small Business or ___ Large Business

(If you are having difficulty determining your size status please call SBA at 1-800-U-ASK-SBA or (202) 205-6618 for assistance.)

8. Is your company certified by the SBA? ___ Yes ___ No

If certified by any agency, please provide the name of that agency: _____

9. Number of Employees: _____

10. Primary NAICS Code: _____

If the NAICS Code is unknown, please refer to www.sba.gov/size or provide a description of your materials and/or services:

11. Please check the following applicable boxes and attach all corresponding certification:

☐ HUB Zone (Historically Underutilized Business Zone)** ☐ Veteran Owned ☐ Service-Disabled Veteran

****Must Provide SBA Certification Certificate**

12. Identify majority owner's ethnicity (owns at least 51% of company): ___ African American, ___ Asian American,

___ Caucasian American, ___ Hispanic American, ___ Native American, ___ Not Applicable (N/A),

___ Other: Specify _____

Under 15 U.S.C. 645(d), any person who misrepresents a firm's status shall (1) be punished by a fine, imprisonment, or both; (2) be subject to administrative remedies; and (3) be ineligible for participation in programs conducted under the authority of the Small Business Act.

Printed name and Title: _____

Signature: _____ Date: _____

THIS FORM IS APPLICABLE FOR ONE (1) YEAR PERIOD. IT IS YOUR RESPONSIBILITY TO NOTIFY US IF YOUR SIZE OR OWNERSHIP STATUS CHANGES DURING THIS ONE (1) YEAR PERIOD. YOU CAN SUBMIT ANY STATUS CHANGES TO SUPPLIERDIVERSITY@CPSENERGY.COM. PLEASE LIST, ON THIS FORM, OR AN ATTACHED SHEET, ALL OTHER BUSINESS NAMES AND LOCATIONS THAT ARE AFFILIATED WITH YOUR FIRM, E.G., BRANCH LOCATIONS, ETC.

CPS ENERGY BUSINESS QUESTIONNAIRE

BUSINESS QUESTIONNAIRE LOCAL BUSINESS PROGRAM DEFINITIONS

LOCAL BUSINESS CONCERN: Businesses that maintain a business office in the San Antonio Metropolitan Statistical Area, as identified in the 2012 Economic Census, U.S. Department of Commerce Economics and Statistics Administration U.S. Census Bureau. The San Antonio Metropolitan Statistical Area includes the following counties: Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina, and Wilson.

SMALL BUSINESS PROGRAMS AS STATED ON FEDERAL ACQUISITION REGULATION (FAR) PART 19

DISADVANTAGED BUSINESS CONCERN: Business which is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States, and which demonstrates potential for success.

1. **WHO IS SOCIALLY DISADVANTAGED?**

- a) *General.* Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control.
- b) *Members of designated groups.* 1) There is a rebuttable presumption that the following individuals are socially disadvantaged: Black Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts or Native Hawaiians), Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, or Northern Mariana Islands) and Subcontinent Asian Americans (with origins from India, Sri Lanka, Pakistan, the Maldives Island, Bhutan, Nepal and Bangladesh) are presumed to be disadvantaged by ethnicity.
- c) *Those who meet all the requirements of 13 C.F.R. Part 124.*

2. **WHO IS ECONOMICALLY DISADVANTAGED?**

- a) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.
- b) *Those who meet all the requirements of 13 C.F.R. Part 124.*

WOMEN-OWNED SMALL BUSINESS CONCERN: Means a small business concern--

- a) Which is at least 51% owned by one or more women; or, in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women; and
- b) Whose management and daily business operations are controlled by one or more women.

HUBZONE SMALL BUSINESS CONCERN: Means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the SBA.

*HUBZone means a Historically Underutilized Business Zone, which is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, or lands within the external boundaries of an Indian reservation.

VETERAN-OWNED SMALL BUSINESS CONCERN: Means a small business concern—

- a) Not less than 51% of which is owned by one or more veterans (as defined at 38 U.S.C. 101 (2)) or, in the case of any publicly owned business, not less than 51percent of the stock of which is owned by one or more veterans, and
- b) The management and daily business operations of which are controlled by one or more veterans.

SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERN: Means a small business concern—

- a) Not less than 51% of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51% of the stock of which is owned by one or more service-disabled veterans, and
- b) The management and daily business operations of which are controlled by one or more service-disabled veterans, or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- c) Served veteran means a veteran, as defined in 38 U.S.C. 101 (2), with a disability that is service-connected, as defined in 38 U.S.C. 101 (16).

THE NORTHAMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.



RESPONSIBLE RESPONDENT QUESTIONNAIRE

Questions

The Respondent and each entity holding an equity stake in such Respondent shall respond either “yes” or “no” to each of the following questions. If the response is “yes” to any question(s), a detailed explanation of the circumstances shall be provided. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the Proposal and require its rejection. The term “**affiliate**” shall mean any entity which owns a substantial interest in or is owned in common with the entity signing the form, or any entity in which the entity signing the form owns a substantial interest.

Within the past five years, has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

1. Been disqualified, debarred, removed or otherwise prevented from bidding or proposing on or completing a federal, state or local contract anywhere in the United States or any other country?

Yes No

2. Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any contract with any public entity?

Yes No

3. Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any contract with any public entity?

Yes No

4. Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any contract with any public entity?

Yes No



5. Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Texas governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Texas law.

Yes No

6. Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Texas Department of Labor (or its equivalent), federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

Yes No

7. Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

Yes No

8. Been assessed liquidated or other damages for failure to complete any contract on time?

Yes No

9. Been terminated for default under any contract with a public agency?

Yes No

10. Been the recipient of any claim in excess of \$500,000 relating to award of or performance of any contract with any public entity?

Yes No

Explain the circumstances underlying any “yes” answers for the aforementioned questions:



Verification / Declaration

I declare under penalty of perjury under the laws of the State of Texas that the foregoing declaration is true, correct and accurate and that I am the Respondent's Official Representative.

Company Name:

Signature:

Printed Name:

Title:

Executed Date:



DISCLOSURE

In order to fulfill reporting requirements to the CPS Energy Board of Trustees, Company must check one box for each of the following questions:

(NOTE: THE FOLLOWING QUESTIONS ARE RELATED TO THE PROPOSED CONTRACT AND/OR SCOPE OF ACTIVITIES WITH CPS ENERGY. FOR QUESTIONS 1-2, PLEASE REFER TO THE LIST IN THE DISCLOSURE'S APPENDIX)

1. Is a current or former member of the CPS Energy Board of Trustees employed by, or otherwise on the payroll, of Company? A list of current and relevant former Trustees is included in the appendix.

Yes No

**If yes, please provide the name of the Trustee/former Trustee, their position at your organization, how long they are/were employed and will they be working on any activities with CPS Energy.

2. Is a current or former member of the CPS Energy Citizens Advisory Committee employed by, or otherwise on the payroll, of Company? A list of current and relevant former Citizen Advisory Committee members is included in the appendix.

Yes No

**If yes, please provide the name of the member/former member, their position at your organization, how long they are/were employed and will they be working on any activities with CPS Energy.

3. Is your organization a foreign (non-U.S.) governmental or state-owned entity? This includes any subsidiaries, contractors or subcontractors that may be involved with CPS Energy.

Yes No

**If yes, please provide the name of the governmental or state entity which owns your organization and/or subsidiaries, contractors or subcontractors. Also, what percentage ownership does the governmental or state entity retain?



4. Is your organization a foreign political party under the Foreign Corrupt Practices Act (the “FCPA”)? This includes any subsidiaries, contractors or subcontractors that may be involved with CPS Energy.

Yes No

**If yes, please provide the name of the foreign political party for your organization and/or subsidiaries, contractors or subcontractors.

5. Are any of your employees, partners, company officers, registered agents, or members of your board of directors considered foreign officials¹, candidates for foreign political office, or party officials for a foreign political party under the FCPA? This includes any subsidiaries, contractors or subcontractors that may be involved with CPS Energy.

Yes No

**If yes, please provide the name of the individual(s) that is/are considered a foreign official, candidate for foreign political office or party official for a foreign political party (including subsidiaries, contractors or subcontractors). Also, please provide their position at your organization, how long they are employed and their current political or governmental affiliation.

6. In performance of your services under this contract, do you have any facilities/operations which are located/conducted outside of the United States or its territories? This includes any subsidiaries, contractors or subcontractors that may be involved with CPS Energy.

Yes No

**If yes, please provide the location and type of facilities/operations which are located outside of the United States or its territories, including subsidiaries, contractors or subcontractors.

¹ Foreign officials are defined by the FCPA to include any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of such government or department, agency of instrumentality, or for or on behalf of any such public international organization.



7. In performance of your services under this contract, does your organization conduct any business with governmental officials outside of the United States or its territories? This includes any subsidiaries, contractors or subcontractors that may be involved with CPS Energy.

Yes No

**If yes, please provide information regarding the government officials (governmental agency, names, location, etc.) and the specific activities they conduct with your organization, including subsidiaries, contractors or subcontractors.

In accordance with CPS Energy procurement policies and procedures, CPS Energy shall enter into agreements based on “best value,” which is the consideration of pricing together with several other factors, including, but not limited to, financial stability and economic development.

No Current or Prior Conflict of Interest. Company represents that it has/had no current or prior material business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would be inconsistent or incompatible with Company’s obligations to CPS Energy under any resulting agreement.

Notice of Conflict. If any actual or potential conflict of interest arises under this Agreement or if the Company is aware of any current or former CPS Energy employee that will work under this Agreement on their behalf, Company shall immediately inform CPS Energy in writing of such conflict or situation.

Termination for Material Conflict. Notwithstanding the representations made above, if CPS Energy becomes aware of any conflict of interest, through Company's disclosure or otherwise, CPS Energy may terminate any resulting agreement without further liability to Company.

Verification / Declaration. I declare under penalty of perjury under the laws of the State of Texas that the foregoing declaration is true, correct and accurate and that I am the Respondent’s Official Representative.

Change of Status. Company shall be responsible for the timely notification to CPS Energy of any change in the representations made above.



Verification / Declaration

I declare under penalty of perjury under the laws of the State of Texas that the foregoing declaration is true, correct and accurate and that I am the Respondent's Official Representative.

Company Name:

Signature:

Printed Name:

Title:

Executed Date:

Appendix

CPS Energy Board of Trustees	Year
Janie Gonzalez	2019-2020
Edward Kelly	2019-2020
Dr. Willis Mackey	2019-2020
Mayor Ron Nirenberg	2019-2020
John Steen	2019-2020
Janie Gonzalez	2018-2019
Dr. Homer Guevara Jr.	2018-2019
Edward Kelly	2018-2019
Dr. Willis Mackey	2018-2019
Mayor Ron Nirenberg	2018-2019
John Steen	2018-2019
CPS Energy Citizens Advisory Committee	Year
Diana Aguirre-Martinez	2019-2020
George L. Britton Jr.	2019-2020
Juan Cano	2019-2020
Dr. Adelta Cantu	2020
Luisa Casso	2019-2020
Andy Castillo	2019-2020
Bill Day	2019-2020
Mary Dennis	2019-2020
Frank Gonzalez	2020
John Kelly	2020
Michelle Lugalía-Hollon	2019-2020
Roger Plasse	2019-2020
Robert A. Romero	2019-2020
MaryEllen Veliz	2020
David Walter	2019-2020
Allie Watters	2019-2020
Klaus Weiswurm	2019-2020
Joe Yakubik	2019-2020
Raquel Zapata	2020
Diana Aguirre-Martinez	2018-2019
George L. Britton Jr.	2018-2019
Luisa Casso	2018-2019
Andy Castillo	2018-2019
Corina Castillo-Johnson	2018-2019
Bill Day	2018-2019
Mary Dennis	2018-2019
Michelle Lugalía-Hollon	2018-2019
Roger Plasse	2018-2019
Alvaro Rodriguez	2018-2019
Robert A. Romero	2018-2019
David Walter	2018-2019
Allie Watters	2018-2019
Klaus Weiswurm	2018-2019
Joe Yakubik	2018-2019



CPS ENERGY

SUBCONTRACTING DOCUMENTS

It is the policy of CPS Energy to ensure that small, veteran, service-disabled veteran, HUBZone, minority and woman owned businesses have the maximum practicable opportunity to participate as contractors and suppliers. It is CPS Energy's policy to assist these businesses to overcome barriers that may have, in the past, kept them from full and equal participation in the mainstream of the American Business Enterprise System.

In response to its belief of equality of opportunity, CPS Energy has extended the concept of equal opportunity and affirmative action to include efforts toward increasing the amount of business conducted with small, veteran, service-disabled veteran, HUBZone, minority and woman owned businesses.

A policy and formal program have been created for this purpose, and all CPS Energy employees involved with the program are responsible and accountable for the attainment of these goals and objectives.

IMPORTANT PLEASE READ

Contractors classified by CPS Energy as a large business are required to furnish the subcontracting goals when their awarded contract is expected to meet or exceed \$700,000 or \$1,500,000 for construction of a public facility at the time the bid or proposal award. Failure to provide these documents may result in the award being cancelled.

Subcontracting opportunities exist when any part of the services to be performed or goods to be provided entail the use of any other business other than the business contracted to perform the work directly with CPS Energy.

Contractors are asked to contact Supplier Development Office at (210) 353-2474 or via email at cpsenergysubcontracting@cpsenergy.com for assistance when needed in determining when subcontracting opportunities may or may not exist and completing any of the attached documents.



**THIS DOCUMENT MUST BE
COMPLETED AND RETURNED AT THE
TIME OF AWARD**

Please select one of the following options and complete the applicable requirements:

1. **Contractor is submitting a plan.**
2. **Contractor is a small business, so no plan is required.** To qualify as a small business, a contractor must be classified as a small business by CPS Energy. If a contractor is a small business, select one of the two following statements:

A contractor has previously been classified as a small business by CPS Energy.

A contractor is enclosing a completed CPS Energy questionnaire certifying that it is a small business.

3. **This contract is for construction of a public facility and is estimated below \$1,500,000, so no plan is required.**
4. **This contract does not offer subcontracting possibilities, so no plan is required.**

A contractor must state below the specific reasons why the contract does not offer subcontracting possibilities and that all work will be performed by awarded contractor.

Contractors submitting a Subcontracting Plan must also prepare and submit either Summary Subcontract Report Standard Form 294 or 295 semi-annually or annually respectively to CPS Energy and the General Services Administration, upon request (see Section F.) at the commencement of the contract. Copies of these forms will be provided at the time they are due.

Standard Form 295 is required to be submitted if the contractor sells or otherwise provides "**commercial products**" to CPS Energy. Standard Form 294 is required to be submitted by all other contractors.



“Commercial products” are products or services sold

- 1.) In substantial quantities
- 2.) To the general public and/or industry
- 3.) At established catalog prices or at established market prices

1. **Sold in substantial quantities.** Products are considered to be **"sold in substantial quantities"** only when the quantities regularly sold are sufficient to constitute a real commercial market. Thus, models, samples, prototypes, experimental units, and products specially made only for CPS Energy (i.e., to CPS Energy specifications) do not meet this requirement. For services to be considered **"sold in substantial quantities,"** they must be customarily provided by the contractor, using personnel regularly employed and equipment (if any is necessary) regularly maintained solely or principally to provide the services.
2. **To the general public or industry.** A product or service is considered to be sold **to the general public or industry** if there are a significant number of buyers of the product or service other than CPS Energy.
3. **Established catalog and market prices.**

Established catalog prices are prices that are recorded in a form regularly maintained by the contractor. This form (a) must be a verifiable and established record, such as a catalog, price list, schedule, or rate tariff; (b) must be published or available for customer inspection; and (c) must state current or last sales prices to the general public.

Established market prices are current prices that (a) are established in the course of ordinary and usual trade between buyers and sellers free to bargain; and (b) can be substantiated by data from sources independent from the contractor.

THE FOLLOWING SUBCONTRACTING PLAN (SECTIONS 1-6) DOES NOT NEED TO BE COMPLETED IF THE CONTRACTOR HAS DETERMINED NO SUBCONTRACTING OPPORTUNITIES EXIST OR IF THE CONTRACTOR IS A SMALL BUSINESS.



SUBCONTRACTING PLAN

The following Subcontracting Plan is hereby submitted to CPS Energy, Gas and Electric Utility of San Antonio, Texas, by _____ (*Contractor*) in conjunction with

CPS Energy's Purchase Order (PO) Number:

1. Policy Statement

The Contractor will provide a competitive opportunity for suppliers who are small, veteran, service-disabled veteran, HUBZone, non-minority, minority and woman owned businesses, to qualify for and earn a share of the business current or long-term purchase volume, commensurate with the merits of their offerings and their proven qualifications or demonstrated performance as suppliers.

The Contractor has and will continue to utilize small, veteran, service-disabled veteran, HUBZone, non-minority, minority and woman owned businesses to the greatest extent practicable consistent with efficient performance of all contracts or subcontracts.

2. Measures to Promote Equal Opportunities

In order to ensure that small, veteran, service-disabled veteran, HUBZone, non-minority, minority and woman owned businesses owned and controlled by socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts, the Contractor will:

- 2.1 Maintain a program designed to locate capable small, veteran, service-disabled veteran, HUBZone, non-minority, minority and woman owned businesses for current and future subcontracting opportunities.
- 2.2 Review company policies and procedures to assure and encourage equitable opportunity to small, veteran, service-disabled veteran, HUBZone, non-minority, minority and woman owned businesses in letting subcontracts.
- 2.3 Coordinate inquiries and requests for advice from small, veteran, service-disabled veteran, HUBZone, non-minority, minority and woman owned businesses.
- 2.4 Assure that participation of both large and small, veteran, service-disabled veteran, HUBZone, non-minority, minority and woman owned businesses are accurately reported.
- 2.5 Review acquisition programs for possible breakout of items suitable for acquisition from both large and small, veteran-owned businesses, service-disabled veteran-owned businesses, HUBZone businesses, non-minority, minority and woman owned businesses.



3. Small, Service-Disabled Veteran, Veteran, HUBZone, Non-Minority, Minority and Woman Owned Businesses

View the Supplier Classification Report at www.cpsenergy.com to review CPS Energy registered suppliers to identify small, veteran, service-disabled veteran, HUBZone, minority and woman owned businesses.

For an approved listing of CPS Energy Suppliers by products or capabilities email your request to cpsenergysubcontracting@cpsenergy.com

Which of the following sources listed were used to identify small, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, minority and woman owned businesses, only those marked were used in this contract:

Company resource lists

Referrals by other small business firms

CPS Energy, Supplier Listings

CPS Energy, Supplier Classification List

Other:

The administrator of this Subcontracting Plan who is responsible for compiling data for the Plan and for the regular reviewing, updating and implementation of this Subcontracting Plan throughout the duration of this contract is:

Name of Administrator:

Address of Administrator:

City/ST/Zip:

Phone Number of Administrator:

Email Address of Administrator:



4. Estimated subcontracting goals for this contract

Total estimated subcontracting for this Contract (*only that portion of the overall contract that offers subcontracting opportunities*)

\$ 100%

<u>Estimated subcontracting Large Businesses:</u>	<u>Amount</u>	<u>Percentage</u>
--	----------------------	--------------------------

Large Non-Minority Owned	\$	%
Large Minority Owned	\$	%
Large Woman Owned	\$	%
Large Service-Disabled Veteran Owned	\$	%
Large Veteran Owned	\$	%
Large Non-Minority Owned	\$	%
HUBZone Large Business	\$	%

<u>Estimated subcontracting Small Businesses:</u>	<u>Amount</u>	<u>Percentage</u>
--	----------------------	--------------------------

Small Non-Minority Owned	\$	%
Small Minority Owned	\$	%
Small Woman Owned	\$	%
Small Service-Disabled Veteran Owned	\$	%
Small Veteran Owned	\$	%
Small Non-Minority Owned	\$	%



5. Principal Subcontractors

View the [Supplier Classification List](http://www.cpsenergy.com) on www.cpsenergy.com to review CPS Energy registered suppliers to identify small, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, minority and woman owned businesses.

Subcontractor #1

Company Name:

Address:

City/ST/Zip:

Phone Number:

Email Address:

Type of material/services to be provided:

Dollars estimated to be subcontracted:

Check one of the following for each item:

Size:	Small Business	Large Business
Non-Minority Owned	Yes	No
Minority Owned	Yes	No
Woman Owned	Yes	No
Service-Disabled Veteran Owned	Yes	No
Veteran Owned	Yes	No



Subcontractor #2

Company Name:

Address:

City/ST/Zip:

Phone Number:

Email Address:

Type of material/services to be provided:

Dollars estimated to be subcontracted:

Check one of the following for each item:

Size:	Small Business	Large Business
Non-Minority Owned	Yes	No
Minority Owned	Yes	No
Woman Owned	Yes	No
Service-Disabled Veteran Owned	Yes	No
Veteran Owned	Yes	No



Subcontractor #3

Company Name:

Address:

City/ST/Zip:

Phone Number:

Email Address:

Type of material/services to be provided:

Dollars estimated to be subcontracted:

Check one of the following for each item:

Size:	Small Business	Large Business
Non-Minority Owned	Yes	No
Minority Owned	Yes	No
Woman Owned	Yes	No
Service-Disabled Veteran Owned	Yes	No
Veteran Owned	Yes	No



Subcontractor #4

Company Name:

Address:

City/ST/Zip:

Phone Number:

Email Address:

Type of material/services to be provided:

Dollars estimated to be subcontracted:

Check one of the following for each item:

Size:	Small Business	Large Business	
Non-Minority Owned		Yes	No
Minority Owned		Yes	No
Woman Owned		Yes	No
Service-Disabled Veteran Owned		Yes	No
Veteran Owned		Yes	No

(Please submit an additional form and populate Section 5 for more than four Subcontractors.)



6. Records to be Maintained

The Contractor, in regard to this Subcontracting Plan, will maintain the following records:

1. Small, veteran, service-disabled veteran, HUBZone, non-minority, minority and woman owned businesses source lists, guides and other data identifying small, veteran, service-disabled veteran, HUBZone, non-minority, minority and woman owned businesses contractors and suppliers.
2. Organizations contacted for small, veteran-owned businesses, service-disabled veteran-owned businesses, HUBZone businesses, non-minority, minority and woman owned businesses sources.
3. On a contract-by-contract basis, records to support award data submitted to CPS Energy, **to include name and address of subcontractor(s)** and General Service Administration upon request.

Submitted by:

Signed:

Printed Name:

Title:

Date:



RESPONDENT SAFETY INFORMATION QUESTIONNAIRE

1. Safety Statistics & Information

a. Provide responses for each of the following:

- i. Respondent's Total Recordable Injury Rate ("**TRIR**") pursuant to Occupational and Health Administration ("**OSHA**") standards for the past three years:

2020

2019

2018

- ii. Respondent's North American Industry Classification System ("**NAICS**") Code and TRIR average for the industry.

North American Industry Classification System ("**NAICS**") Code

NAICS Code TRIR Industry Average

- iii. Respondent's Experience Modification Ratings ("**EMR**") for the past three years"

2020

2019

2018

Note: Respondent's statements of worker compensation EMRs shall also be presented in the proposal on NCCI letterhead, as required in the RFP.

Respondents that do not submit one or more safety statistics requested above may be disqualified.

2. Questions

Respondent will respond "Yes" or "No" to each of the following questions.

- a. Is the Respondent able to provide an individual that has completed the OSHA 30-Hour Outreach Training Course?

Yes

No

Name:



- b. Is the Respondent able to provide an individual that will be committed and able to support the Services to be performed as set forth in the Statement of Work by participating in safety event analysis should such an event occur?

Yes No

- c. Has the Respondent received any OSHA citations during the current calendar year or any of the previous three calendar years?

Yes No

If "Yes" is checked, Respondent should state the OSHA citation category for each citation and include an explanation of each citation. Respondents with "Willful" citations may be disqualified.

- d. Is the Respondent exempt from OSHA reporting standards?

Yes No

If "Yes" is checked, Respondent should describe the exemption.

Verification / Declaration

I declare under penalty of perjury under the laws of the State of Texas that the foregoing declaration is true, correct and accurate and that I am the Respondent's Official Representative.

Company Name:

Signature:

Printed Name:

Title:

Executed Date:



FINANCIAL QUESTIONNAIRE

Financial Statements

Respondent shall indicate the inclusion of **the most recent three (3) complete fiscal years** of the following audited financial statement documentation within the RFP response:

i. Balance Sheet	Yes	No
ii. Income Statement	Yes	No
iii. Cash Flow Statement	Yes	No
iv. Statement of Shareholder Equity	Yes	No
v. Statement of Comprehensive Income	Yes	No
vi. Notes to the financial statements	Yes	No

Are the last three complete fiscal years of reviewed (unaudited) financial statements and calendar year tax returns being submitted in lieu of audited financial statement documentation?

Yes No Not Applicable

Explanation of Deficiencies

Respondent shall provide a written explanation for any “No” responses. Failure to provide an explanation may result in disqualification.

Note: Respondents that do not provide required documentation, may be disqualified.



Verification / Declaration

I declare under penalty of perjury under the laws of the State of Texas that the foregoing declaration is true, correct and accurate and that I am the Respondent's Official Representative.

Company Name:

Signature:

Printed Name:

Title:

Executed Date:

Parameters and Assumptions

The following assumptions can be used for the Utility Cost Test (UCT), Participant Cost Test (PCT) and Total Resource Cost (TRC) benefit-costs test ratios for each Program for each year:

- a. All costs are present value, first year benefits and costs are not discounted.
- b. Annual discount rate = 6.60%.
- c. Inflation rate = 2.0%.
- d. Line Loss Factor = 5.08%
 1. Energy Line Loss Factor = 5.08%
 2. Capacity Loss Factor = 8.15%
- e. Savings at Generator = Savings at Meter * 1/ (1-Line Loss Factor).
- f. Annual energy and capacity avoided costs are provided below; no other avoided costs are to be included (See Attachment J for avoided costs).
- g. For the purposes of this proposal, net-to-gross is assumed to be 100% in all instances, so all costs and savings are assumed to be gross.
- h. PV = present value in 2020 dollars.
- i. Administrative costs = third-party delivery agent costs only (excludes CPS Energy related costs, such as CPS Energy staff, evaluation costs, etc.)
- j. $UCT = PV \text{ Avoided Utility Costs} / (PV \text{ Administrative} + PV \text{ Incentive Costs.})$
- k. $PCT = (PV \text{ Incentive Costs} + PV \text{ Bill Reductions}) / PV \text{ Measure Installed Costs}$ (See Attachment K for retail rates.)
- l. $TRC = PV \text{ Avoided Utility Costs} / (PV \text{ Administrative Costs} + PV \text{ Measure Installed Costs.})$
- m. Respondents to provide key assumptions behind their cost calculations.
- n. Savings measures listed in the CPS Energy Technical Guidebook latest version, must use the methodologies or deemed savings listed in the manual.
- o. All cost effectiveness scores are subject to review by CPS Energy's measurement and verification vendor.
- p. We are providing these placeholder values to be used to compute the UCT, PCT and TRM. These are based on PUCT avoided costs with an escalation factor. We will use actual CPS Energy avoided costs in evaluating performance during the contract term.

Placeholder Avoided Costs				
Year	Avoided Cost of Energy		Avoided Cost of Capacity	Avoided TCOS
	Summer* (\$/kWh)	Non-Summer** (\$/kWh)	Capacity Cost (\$/kW-yr)	TCOS Charges (nominal \$/kW)
2020	\$ 0.0478	\$ 0.0244	\$ 80.00	\$ 50.840
2021	\$ 0.0502	\$ 0.0256	\$ 81.60	\$ 51.348
2022	\$ 0.0527	\$ 0.0269	\$ 83.23	\$ 51.862
2023	\$ 0.0553	\$ 0.0282	\$ 84.90	\$ 52.381
2024	\$ 0.0581	\$ 0.0297	\$ 86.59	\$ 52.904
2025	\$ 0.0610	\$ 0.0311	\$ 88.33	\$ 53.433
2026	\$ 0.0641	\$ 0.0327	\$ 90.09	\$ 53.968
2027	\$ 0.0673	\$ 0.0343	\$ 91.89	\$ 54.507
2028	\$ 0.0706	\$ 0.0360	\$ 93.73	\$ 55.052
2029	\$ 0.0742	\$ 0.0379	\$ 95.61	\$ 55.603
2030	\$ 0.0779	\$ 0.0397	\$ 97.52	\$ 56.159
2031	\$ 0.0818	\$ 0.0417	\$ 99.47	\$ 56.721
2032	\$ 0.0858	\$ 0.0438	\$ 101.46	\$ 57.288
2033	\$ 0.0901	\$ 0.0460	\$ 103.49	\$ 57.861
2034	\$ 0.0946	\$ 0.0483	\$ 105.56	\$ 58.439
2035	\$ 0.0994	\$ 0.0507	\$ 107.67	\$ 59.024
2036	\$ 0.1043	\$ 0.0533	\$ 109.82	\$ 59.614
2037	\$ 0.1096	\$ 0.0559	\$ 112.02	\$ 60.210
2038	\$ 0.1150	\$ 0.0587	\$ 114.26	\$ 60.812
2039	\$ 0.1208	\$ 0.0617	\$ 116.54	\$ 61.420
2040	\$ 0.1268	\$ 0.0647	\$ 118.88	\$ 62.034
2041	\$ 0.1332	\$ 0.0680	\$ 121.25	\$ 62.655
2042	\$ 0.1398	\$ 0.0714	\$ 123.68	\$ 63.281
2043	\$ 0.1468	\$ 0.0749	\$ 126.15	\$ 63.914
2044	\$ 0.1542	\$ 0.0787	\$ 128.67	\$ 64.553
*Summer:	June - Sept		Energy escalators	105%
**Non-Summer:	Oct - May		Capacity escalators	102%
			TCOS escalators	101%



MASTER AGREEMENT

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MASTER AGREEMENT

This **MASTER AGREEMENT** (the “**Master Agreement**”) is entered into as of this _____ day of _____, 20____ (the “**Effective Date**”) by and between:

“**CPS Energy:**”

The City of San Antonio, acting by and through City Public Service Board

and

“**Company:**”

Company Name:

Attn:

Address:

Legal Notice to:

CPS Energy

Attn: General Counsel

P.O. Box 1771

San Antonio, Texas 78296

LegalNotices@cpsenergy.com

Phone:

Fax:

Email:

Legal Notice to:

With a Copy to:

CPS Energy

Attn: Supply Chain

P.O. Box 1771

San Antonio, Texas 78296

With a Copy to:

Company and CPS Energy are sometimes individually referred to herein as a “**party**” and collectively as the “**parties.**”

WHEREAS, CPS Energy desires to retain Company as an independent contractor for the purposes set forth and as defined herein; and

WHEREAS, this Master Agreement defines the terms and conditions of the business relationship between the parties.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the parties mutually agree to the following:

1. GOODS, SOFTWARE, DELIVERABLES AND/OR SERVICES

a. **Definitions.** Other than to the extent otherwise agreed in writing, the following terms shall have the meaning given to them in this subsection:

- i. “**Goods**” shall mean the equipment, products, supplies, parts, materials, and/or other tangible items supplied by Company to CPS Energy and identified in an Order and any related support, consulting, training, installation, maintenance, and/or other services incidental to CPS Energy’s use of the Goods;
- ii. “**Software**” shall mean the software programs and related program updates and documentation supplied by Company to CPS Energy and identified on an Order and any related support, consulting, training, installation, maintenance, and/or other services incidental to CPS Energy’s use of the Software;
- iii. “**Deliverables**” shall mean those items specifically identified in writing in an Order as a Deliverable or the output created specifically for or commissioned by CPS Energy as the result of work performed by Company during a project;



- iv. **“Services”** shall mean the Services Company has been engaged to provide to CPS Energy as further described in an Order, and unless agreed otherwise by the parties in writing, includes all labor, tools, equipment and machinery, parts and materials required to fulfill Company's obligations.
 - v. For purposes of this Master Agreement, an **“Order”** shall include:
 - 1. A purchase order issued by CPS Energy; however, the terms of such purchase order shall be enforceable against Company only to the extent such terms do not conflict and are not inconsistent with the terms of this Master Agreement;
 - 2. A Statement of Work (**“SOW”**) executed against this Master Agreement and agreed to in writing by duly authorized representatives from both parties; and
 - 3. A written agreement of the parties executed against this Master Agreement and agreed to in writing by duly authorized representatives from both parties.
 - vi. **“Documentation”** shall mean Company’s written documentation provided in connection with and which describe the functions and features of the Goods, Software, Deliverables, and/or Services provided by Company under the Agreement, including, but not limited to, user guides and manuals, information describing technical functionality and specifications, and related information that Company provides to its customers generally in connection with the Goods, Software, Deliverables, and/or Services that are the subject matter of the Agreement, whether in print, web based, or other electronic form, all of which may be updated from time to time. Documentation shall include technical information, specifications, configuration information, designs, plans, drawings, writings, and/or schematics provided by CPS Energy to Company prior to fulfillment of an Order. Documentation does not include marketing and promotional materials to the extent that such materials state subjective evaluations of Goods, Software, Deliverables, and/or Services.
- b. The Agreement. Absent a properly executed Order, this Master Agreement does not, in and of itself, represent a commitment by CPS Energy to receive any Goods, Software, Deliverables or Services from Company nor to pay Company any fees. The Order, as amended, together with the related Master Agreement, as amended and any addenda, exhibits, appendices and other documents attached to or incorporated by reference to the Order or Master Agreement shall be collectively referred to as the **“Agreement.”**
- c. Controlling Document. This Master Agreement shall govern each Order issued pursuant to this Master Agreement and the terms of this Master Agreement shall control unless the terms of the Order conflict or are inconsistent with the provisions of this Master Agreement, and such Order is agreed to in writing by duly authorized representatives from both parties. Then, to the extent that such terms conflict or are inconsistent with the provisions of this Master Agreement, any such terms shall control, but only for the purposes of the particular Order in which such terms are provided. The pre-printed terms of each party’s business forms shall have no effect whatsoever. If the installation process for Software presents a “clickwrap” or similar agreement, CPS Energy’s “click” or other action taken to advance the installation shall be deemed an acceptance only of those terms that conform to the Agreement; other terms shall be of no force or effect whatsoever.

2. TERM & TERMINATION

- a. Term. The Initial Term of this Master Agreement will commence on the Effective Date set forth above and will continue for one (1) year (the **“Initial Term”**). Upon expiration of the Initial Term, this Master Agreement shall automatically renew for consecutive one (1) year periods (each, a **“Renewal Term,”** and together with the Initial Term, the **“Term”**) unless and until either party gives at least thirty (30) days’ prior written notice of its intent not to renew. Notwithstanding the foregoing, the terms of this Master Agreement shall apply to an open Order executed pursuant to this Master Agreement until such Order is expired or terminated.
- b. Suspension of Services. CPS Energy may suspend Company’s Services upon seven (7) days’ written notice.
- c. Coterminous Maintenance Periods. If, in connection with any Goods or Software, CPS Energy purchases maintenance, support or similar Services on an annual (or other term) basis, then CPS Energy may, but will not be required to, purchase such Services on a coterminous basis for each subsequent Order for Goods or Software.

Company shall pro-rate its price for the first partial Service period based on the actual number of days covered by the first partial Service period.

- d. Termination at Will. CPS Energy shall have the option to terminate this Master Agreement or any individual Order, without cause, by providing Company thirty (30) days' written notice.
- e. Termination for Cause. If either party believes that the other party has failed in any material respect to perform its obligations under the Agreement, then that party shall provide written notice to the other party describing the alleged failure in reasonable detail. If the breaching party does not, within thirty (30) days after receiving such written notice, either (a) cure the material failure or (b) if the breach is one that cannot reasonably be cured within thirty (30) days, commence and continue to diligently pursue a cure satisfactory to the non-breaching party, then the non-breaching party may terminate the Agreement, in whole or in part, "**For Cause**" by providing written notice to the breaching party.
- f. Termination of Master Agreement or Order. Termination of this Master Agreement shall result in termination of each Order executed against this Master Agreement. Termination of an individual Order shall not be deemed termination of this Master Agreement.
- g. Termination for Insolvency. Either party shall have the right to immediately terminate the Agreement, by providing written notice to the other party, in the event that (i) the other party becomes insolvent, enters into receivership, is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors; or (ii) a substantial part of the other party's property becomes subject to any levy, seizure, assignment or sale for or by any creditor or government agency.
- h. Payments Due Post Termination. The termination of the Agreement shall not release either party from the obligation to make payment of all amounts due or payable according to the provisions herein. In the event of termination, Company shall immediately stop work as to the terminated portion of the Order, notify all suppliers, subcontractors and sub-suppliers to stop work on contracts for performance hereunder and to protect and preserve property in its possession in which CPS Energy has or may acquire an interest. Company shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by its suppliers or sub-suppliers which Company could reasonably have avoided. In the event CPS Energy has agreed to a termination charge, under no circumstance shall the aggregate of all such termination payments plus all other payments made under an Order exceed the total sum due under the Order.
- i. Continuation of Services. If Company has been engaged to provide Services, Company will continue to perform Services for which it has been engaged during the termination notice period unless otherwise mutually agreed upon by the parties in writing. At CPS Energy's request and cost, Company will assist CPS Energy in the orderly termination of Services, including the timely transfer to another designated service provider.
- j. Identification and Delivery of Work. In the event of termination, Company shall deliver to CPS Energy all work, whether complete or partially complete. Such work shall be delivered in a form acceptable to CPS Energy within five (5) business days of Company's receipt of a notice of termination For Cause, and within thirty (30) calendar days of Company's receipt of a notice of Termination at Will.

3. PRELIMINARY EVALUATION

- a. Evaluation Criteria. The applicable Order shall set forth the agreed specifications and/or requirements relating to any Goods, Software, Deliverables, and/or Services, which, together with the Documentation, shall constitute the "**Evaluation Criteria**."
- b. Preliminary Evaluation Period. CPS Energy shall have up to thirty (30) business days following delivery of Goods, Software, and/or Deliverables or completion of Services ("**Preliminary Evaluation Period**") to perform a preliminary evaluation of the Goods, Software, Deliverables, and/or Services. If the Goods, Software, Deliverables, and/or Services fail to materially conform to the Evaluation Criteria ("**Non-Conformance**"), CPS Energy may reject the nonconforming Goods, Software, Deliverables, and/or Services by written notice to Company. Failure by CPS Energy to reject Goods, Software, Deliverables, and/or Services during the Preliminary Evaluation Period shall not waive or alter the Warranty provisions.



- c. Return of Nonconforming Goods, Software, and/or Deliverables. CPS Energy may return any nonconforming Goods, Software, and/or Deliverables at Company's expense. CPS Energy shall promptly notify Company and reasonably cooperate with Company's return process and/or investigations with respect to the return of the Goods, Software, and/or Deliverables.
- d. Cure Period. Company shall have ten (10) days from CPS Energy's notice of rejection of any nonconforming Goods, Software, Deliverables, and/or Services to cure the items of Non-Conformance. No Fees shall be due for that portion of the Goods, Software, Deliverables, and/or Services so rejected until and unless such Non-Conformance is cured in accordance with the provisions of the Agreement.

4. GOODS

- a. Shipping and Delivery. Unless otherwise agreed in an Order, delivery of Goods shall be FOB CPS Energy Indicated Destination (Uniform Commercial Code §2-319) to the CPS Energy location(s) listed on the Order. Additional terms of delivery shall be stated in the Order and the obligation of Company to meet the delivery date, specifications and quantities set forth therein is a material element of the Order. Shipments in greater or lesser quantity than ordered or items delivered substantially in advance of a scheduled delivery date may be returned at Company's expense, including transportation charges both ways.
- b. Risk of Loss. Unless otherwise agreed in writing by the parties, the risk of loss and damage to the Goods shall pass to CPS Energy upon delivery of such Goods to the CPS Energy location(s) listed on the Order.
- c. Packing / Freight. All Goods shall be properly packed, marked, loaded and shipped as required by the Order and in a manner which prevents damage or deterioration in transit and ensures the safe arrival of Goods at the named destination and that permits the lowest transportation rates to apply. CPS Energy is not liable for extra charges for boxing, crating, packing, cartage, handling or anything else unless stated in the Order. Company shall mark the CPS Energy Purchase Order Number, Company's name, packing slip number and other identification on all containers, invoices, correspondence, bills of lading and other shipping papers and enclose a packing slip in each container. Company shall mark all containers with necessary lifting, handling and shipping information. For freight charges over \$250.00, Company must provide bulk-freight bill. CPS Energy will only pay for actual freight charges incurred by Company and will not pay for any marked-up freight charges. Company shall provide suitable transportation to deliver the Goods and shall warrant that all permits and licenses required by federal, state or local law for transporting the Goods are validly held by the Company and/or its agents and employees.
- d. Duty / Customs. Company shall be responsible for payment of duty and other charges in connection with the import and/or delivery of Goods and for all import and export requirements and fees, including, but not limited to, performance of any administrative matters connected with the passing of the Goods through customs.
- e. Delivery to Storeroom. A notice of forty-eight (48) hours is required prior to any delivery when the delivery is away from the storeroom address or for shipments requiring special unloading equipment and/or crews. Delivery hours by storeroom are available at www.cpsenergy.com.
- f. Late Delivery. If Company becomes aware that it will not be able to meet the scheduled delivery date, then: (i) it shall promptly notify CPS Energy of the delay and its proposed solution and recovery plans, and (ii) shall expedite delivery of any such Goods at its expense. Acceptance by CPS Energy of early or late delivery shall not waive the right to claim damage for such breach nor constitute a waiver of the requirements for timely performance of any obligation to be performed by Company.
- g. Postponing Shipment. CPS Energy may postpone the shipment date one time by written notice given at least one (1) business day prior to the scheduled shipment date, provided that the rescheduled date does not exceed the original date by more than thirty (30) days. Shipment dates may be rescheduled only by an authorized representative of CPS Energy.
- h. Cancellation. Unless otherwise agreed in writing by the parties in an Order, CPS Energy shall have no liability for cancellation of an Order at least three (3) business days prior to the scheduled shipment date.
- i. Safety Data Sheet ("SDS"). If an SDS is required by law on one or more of the Goods being supplied, Company must provide to CPS Energy, with the initial shipment of the Goods, and with the first shipment of the Goods after any changes in those Goods, an SDS in accordance with the Occupational Safety & Health Administration (OSHA)



Hazard Communication Standard (29 C.F.R. 1910.1200) and the Texas Hazard Communication Act. The SDS document must be sent via email to EnvironmentalChemicalStorageUpdates@cpsenergy.com or contained in a weatherproof package if it is exposed to the elements. CPS Energy shall have a right to reject any shipment of Goods that do not include the required SDS. CPS Energy shall have the right to withhold any payments due to Company's failure to provide any required SDS.

- j. Product Hazard. In the event that either party becomes aware that Goods or Software provided by Company to CPS Energy or the use of Goods or Software provided by Company to CPS Energy could cause death or bodily injury to a person, or substantial damage to tangible property, or becomes aware of information that such a condition could exist, that party shall notify the other party immediately, and in all events within twenty-four (24) hours. Company shall be responsible for all replacement costs associated with such a hazard, such as the cost of recall or substitution. Unless otherwise required by law, in the reasonable opinion of a party's legal counsel, neither party shall disclose the existence of such a hazard to a governmental agency without the participation of the other party.

5. SOFTWARE

- a. License. Subject to the terms of the Agreement and any other written agreement between the parties concerning the purchase or license of Software, Company hereby licenses the Software to CPS Energy on a worldwide, non-exclusive, non-sublicensable basis on the commercial terms stated in the Order. Unless otherwise stated in an Order, the license shall be perpetual and royalty-free.
- b. Standard Licensing Terms. Company's licensing terms for Software, which may be stated in Company's End User License or similar agreement, shall become part of the Agreement if and to the extent they fall within one of the following categories, but shall otherwise be of no force or effect whatsoever unless expressly agreed to in writing by the parties: (a) reservation of rights except for rights specifically granted in the Agreement; (b) restrictions on decompiling, reverse engineering, and similar activities, provided that no such restriction shall apply to the extent applicable law prohibits such a restriction; (c) restrictions on modifications and creation of other derivative works based on the Software; and (d) reasonable and customary language required by Company's third-party licensors to be included in Company's license with its customers, provided that such language is consistent with the commercial terms of CPS Energy's license for the Software.

6. SERVICES

- a. Services. Company shall perform the Services as set forth in an Order.
- b. CPS Energy Field Representative. Company shall act under the authority and approval of the CPS Energy Field Representative in performing the Services; however, Company shall act in accordance to its own expertise, experience, manner, and methods, and through its own duly authorized employees or agents.
- c. Personnel Under Control of Company. The personnel performing Services under the Agreement shall at all times be under the control of Company. Company shall be fully liable for all acts and omissions of its employees, subcontractors, or other personnel assigned by Company to perform Services, and shall be specifically responsible for sufficient supervision and examination to assure compliance in every respect with the Agreement requirements.
- d. Subcontractors. Company agrees that it will obtain CPS Energy's written consent prior to the assignment of any subcontractor to perform any of the Services hereunder. No such approval shall relieve Company from any of the obligations of the Agreement with CPS Energy. Company shall require each subcontractor, to the extent Services are performed by the subcontractor, to be bound by the terms of the Agreement and to assume towards CPS Energy, to the extent applicable, all the responsibilities and obligations which Company by the Agreement assumed towards CPS Energy. Company shall keep such records and furnish reports and information relative to the subcontractor or subcontractor's employees, agents, etc. as CPS Energy may reasonably request.
- e. Qualification and Approval of Personnel. Company's personnel assigned to the perform Services shall possess sufficient skills and expertise as required to satisfactorily meet all specifications and obligations of Company under the Agreement. CPS Energy retains the right to reject or require Company to remove any personnel whose qualifications or performance in CPS Energy's good faith and reasonable judgment do not meet the standards for performing the contracted Services.



- f. Key Personnel. CPS Energy reserves the right to participate in the interviewing process and the review of resumes of personnel who are being considered by Company as key personnel for assignment to perform Services. Key Personnel identified in an Order or whose resumes were the basis upon which CPS Energy made its decision to retain Company shall be maintained, outside of emergencies, for the duration of the Term of the applicable Order.
- g. CPS Energy Property. Company shall only use CPS Energy's equipment, facilities, personnel, and office space as reasonably necessary for the performance of Services as agreed upon by Company and CPS Energy. All CPS Energy property in the possession or control of Company including, but not limited to, specifications, documentation, and building entry keys and cards, as well as all material developed or derived by Company in performing Services under the Agreement, will be returned by Company to CPS Energy on demand, or at the termination of the Order, whichever shall come first.

7. FEES

- a. Fees. In exchange for the Goods, Software, Deliverables received from Company or the Services performed by Company, CPS Energy agrees to compensate Company at the rates identified in the applicable Order (the "Fees"). Unless otherwise agreed to in writing by the parties, the Fees, including any related maintenance fees, will not be subject to any price increase following the acceptance of an Order and prior to delivery or completion. Company represents and warrants that it will offer to CPS Energy pricing terms at least as favorable as those offered to any other customer. If Company offers more favorable pricing to any other customer during the Term of this Master Agreement, then Company must provide written notice to CPS Energy of such offer and must (i) modify the pricing available to CPS Energy, and (ii) refund to CPS Energy an amount equal to the difference between the prices paid and the prices that would have been paid under the modified pricing back to the date that the more favorable pricing was made available to the other customer.
- b. Submission of Invoice / Payment Terms. Unless otherwise specified in an Order, Company shall invoice CPS Energy upon delivery of the Goods, Software or Deliverables, or each month for the Services completed during the immediately preceding month. Company shall send invoices to the following address: CPS Energy, Attn: Accounts Payable - MD 100705, P.O. Box 2921, San Antonio, Texas 78299-2921, or as otherwise directed by CPS Energy. Invoices are payable within thirty (30) days upon receipt of invoice. CPS Energy shall not be required to pay any invoices that are issued more than sixty (60) days after the end of the month during which Fees accrued.
- c. Invoice Requirements. Invoices shall include sufficient detail so that invoiced amounts can be matched to the respective Order. Such detail shall include, for Goods: (i) the Purchase Order number, (ii) the quantity and type of Goods, (iii) the date those Goods were shipped, and (iv) whether the shipment of Goods was for less than the total quantity covered by an Order; for Deliverables: (i) the Purchase Order number, (ii) the type of Deliverable(s), and (iii) the date(s) on which the Deliverable(s) were delivered; for licenses for Software: (i) the Purchase Order number, (ii) the quantity of licenses, and (iii) the date on which they were provided to CPS Energy; and with regard to Services: (i) the Purchase Order number, (ii) the type of Service, (iii) the location where the Services were performed, and (iv) the date(s) on which the Services were completed. Invoices not conforming to these requirements may be rejected.
- d. Disputed Amounts / Late Payments. If there is a dispute with respect to any portion of an invoice, CPS Energy shall pay the undisputed portion and provide written details specifying the basis of any dispute. If CPS Energy fails to pay when due any properly invoiced and undisputed amount, Company may be entitled to interest for overdue payments pursuant to the Texas Prompt Payment Act, Texas Government Code Chapter 2251.
- e. Withholding Payment. If through any cause, Company shall fail to fulfill in a timely and proper manner its obligations under the Agreement, or if Company shall violate any of the covenants, agreements, or stipulations of the Agreement, CPS Energy may withhold payments to Company for the purpose of set-off. Such set-off may include, but shall not be limited to, amounts necessary to offset resulting fines, penalties, costs and expenses incurred by CPS Energy as a result of Company's failure or negligence.
- f. Tax-Exempt Organization. CPS Energy is a municipally owned electric and gas utility and as such is a TAX-EXEMPT ORGANIZATION. CPS Energy is exempt from certain sales and use taxes with respect to the purchase price of all materials, supplies, equipment and consumables purchased under an Order or a separate contract, and

which are incorporated into the work. Company shall not invoice or charge CPS Energy for such taxes and shall be provided with a Sales Tax-Exemption Certificate upon request. Failure by Company to request a Sales Tax-Exemption Certificate shall not mean that CPS Energy waives its tax-exempt status. CPS Energy shall not pay any taxes for which it is exempt. Additionally, unless expressly agreed otherwise in writing, Company shall be solely responsible for any taxes related to the Agreement, including, but not limited to, sales tax, use tax, value-added tax, withholding tax, goods and services tax, provincial sales tax, harmonized sales tax, ad valorem property and gross receipts taxes, taxes based on Company's net income, or any other similar taxes imposed on Company relating in any way to the Goods, Software, Deliverables, and/or Services provided under the Agreement.

- g. **Expenses.** Unless otherwise agreed in an applicable Order, CPS Energy shall reimburse Company only for pre-approved, actual, out-of-pocket expenses if reasonably and customarily incurred by Company in connection with the delivery of Goods, Software, and/or Deliverables or the performance of contracted Services and to the extent compliant with CPS Energy's Travel Related Expenses Addendum attached to the Order. As additional conditions to receiving reimbursement for an allowed expense, the expenses must be supported by receipt(s), and a request for reimbursement must be made within thirty (30) days of incurring the same. A request for reimbursement must reasonably describe expenses incurred, identify the work for which the expense was incurred and the actual dollar amount of each expense sought to be reimbursed.

8. **INTELLECTUAL PROPERTY**

- a. **Definitions.** For purposes of the Master Agreement, the following terms shall have the meanings given to them in this subsection:
- i. **"CPS Energy Background Materials"** means Materials made, conceived, developed, created or reduced to practice by or for CPS Energy (alone or with others) independent from, or prior to commencement of, CPS Energy's engagement with Company under the applicable Order, and including any Intellectual Property Rights therein and thereto.
 - ii. **"Intellectual Property Rights"** means all copyrights, patents, trademarks, service marks, trade dress, trade secret rights, rights in domain names, rights with respect to databases and other compilations and collections of data or information, publicity and privacy rights, rights with respect to personal information, and other intellectual and industrial property rights anywhere in the world, whether statutory, common law or otherwise.
 - iii. **"Materials"** means information, know-how, data and other technology, including works of authorship and other creations and ideas, databases, compilations, inventions, developments, software, firmware, and other computer programs (in source code, object code or any other format), documentation, technical information, specifications, configuration information, designs, plans, drawings, writings, schematics, documents, reports, methods, procedures, concepts, techniques, protocols, systems, elements, components, subsystems, devices, equipment and other hardware.
 - iv. **"Company Background Materials"** means Materials made, conceived, developed, created or reduced to practice by or for Company (alone or with others) independent from, or prior to commencement of, CPS Energy's engagement with Company under the applicable Order, and including any Intellectual Property Rights therein and thereto.
 - v. **"Deliverables"** shall have the meaning set forth in Section 1(a)(iii) of this Master Agreement.
 - vi. **"Work Product"** means Materials other than the Deliverables that Company may make, conceive, develop, create or reduce to practice, alone or jointly with others, in the course of performing the Services or as a result of such Services.
- b. **Ownership.** Unless otherwise agreed in writing, CPS Energy will own the Deliverables, subject to the terms and conditions of the Agreement and Company shall own all Intellectual Property Rights in and to the Work Product. CPS Energy will continue to own the CPS Energy Background Materials and Company will continue to own the Company Background Materials. For the avoidance of doubt, neither the Work Product nor the Company Background Materials include CPS Energy's Confidential Information or CPS Energy Background Materials, both of which shall remain the sole and exclusive property of CPS Energy.

- c. License. Subject to CPS Energy's compliance with the terms of the Agreement, Company grants CPS Energy a license to use to use the Documentation, Work Product and Company Background Materials on a non-exclusive, worldwide, non-transferable, sublicensable, fully paid-up, royalty-free and perpetual basis to the extent they are incorporated in or combined with or otherwise necessary for CPS Energy's use of the Goods, Software, Deliverables and/or Services. CPS Energy shall not misappropriate, infringe, reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code, techniques, processes, algorithms, know-how, processes, formulae, methodologies, or other information of any of the licensed Materials other than expressly permitted herein. All other rights in and to Company Materials are expressly reserved by Company.
- d. Third Party Components. Company has and shall maintain all licenses including the right to license any Third-Party Components to CPS Energy for use permitted by the Agreement without payment of any royalty or fee, or if subject to a royalty or fee, Company has fully disclosed such royalty or fee upfront in writing to CPS Energy. To the extent the Goods, Software, Deliverables and/or Services contain or require the use of third-party technology or include proprietary software components from other vendors under applicable licenses ("**Third-Party Components**"), Company hereby sublicenses all such Third-Party Components to CPS Energy in the most complete manner permitted under the terms of Company's license with the third party.
- e. Trademarks. Neither party may use the other party's name, logo, trade or service marks, or similar indicia (each a "**Trademark**") without the other party's prior written consent. Except as expressly stated herein, each party retains all right, title, and interest in and to its intellectual property. To the extent Company is engaged to deliver Goods, Software, or Deliverables or to perform Services which require Company to reproduce CPS Energy marks, Company shall comply with CPS Energy's Brand Standards.

9. CONFIDENTIALITY

- a. Confidential Information. The parties understand and acknowledge that they may, from time to time, disclose and receive Confidential Information. The following information is "**Confidential Information**": the terms of the Agreement, and all information exchanged by or on behalf of the parties during negotiations culminating in the Agreement and during the Term of the Agreement; any information related to a party's performance of, or failure to perform, the Agreement; any information that is marked or designated as "Confidential" at the time of disclosure; any information related to that party's assets, liabilities, finances, business strategies, product development plans, operations, technology, know-how, trade secrets, inventions, techniques, processes, source code, schematics, designs, network topology, network and data storage information, customers, vendors, and personnel; and all other information that a reasonable person would understand to be confidential given the nature of the information and/or the circumstances of disclosure. During the Term of the Agreement and thereafter, the receiving party will not (i) use the Confidential Information except to perform its duties and obligations under the Agreement or (ii) disclose the Confidential Information to any third party without the prior written consent of the disclosing party, except that the receiving party may disclose the Confidential Information to its employees, agents, and representatives who need to know the information to represent or advise it with respect to the subject matter of the Agreement, and who are bound by written non-disclosure obligations at least as stringent as those stated in the Agreement. The receiving party shall take reasonable measures to prevent any unauthorized disclosure by its employees, agents, and representatives. In no event shall the receiving party use the disclosing party's Confidential Information to reverse engineer products or services of the disclosing party. The receiving party's obligations with respect to the Confidential Information also extend to any third party's proprietary or confidential information disclosed by the disclosing party to the receiving party under the Agreement.
- b. Non-Protected Information. This confidentiality obligation will not apply to the extent that the receiving party can demonstrate that: (i) the Confidential Information is available to the public at the time of disclosure; (ii) the Confidential Information thereafter becomes available to the public, except by breach of the provisions of the Agreement or violation of law or other agreement; (iii) the receiving party can establish by written evidence that it had possession of the Confidential Information prior to the time of disclosure; (iv) the Confidential Information is received by the receiving party from a third party that is not bound by a confidential relationship with the disclosing party; or (v) the Confidential Information was developed by employees or agents of the receiving party independently of and without reference to any Confidential Information.

- c. Disclosure. If the receiving party is requested or required (e.g., by deposition, interrogatory, request for documents, subpoena, civil investigative demand, open records request, or similar process) to disclose any of the Confidential Information, then the receiving party will notify the disclosing party (to the extent legally permissible) promptly in writing so that the disclosing party may seek any appropriate protective order and/or take any other action prior to disclosure. In any event that the receiving party is legally compelled or obligated to disclose any of the Confidential Information, such Confidential Information may be disclosed as required; provided, however, that the receiving party will use its best efforts to minimize the disclosure of such information.
- d. Return or Destroy. Each party shall return or irretrievably destroy the other party's Confidential Information and all material that is derived from the Confidential Information immediately on completion of the Agreement, or earlier upon request of the other party, provided that a party may retain the other party's Confidential Information only if reasonably necessary to use the Goods, Software, Deliverables, and/or Services, or to maintain reasonable and customary business records. On request of a party, an officer of the other party shall certify its compliance with the preceding sentence.
- e. Injunctive Relief. The parties agree that the disclosure of Confidential Information by the receiving party may cause the disclosing party irreparable damage for which recovery of money damages may be inadequate. The disclosing party is therefore entitled to seek, in addition to all other rights and remedies available under applicable law, injunction, temporary restraining order, protective order, specific performance, or any other equitable relief, from any court of competent jurisdiction, restraining any violation or threatened violation of any terms of this Section 9, it being agreed that money damages alone would be inadequate to compensate the affected party and would be an inadequate remedy for such breach.
- f. Public Information Act. Notwithstanding any provision herein to the contrary, Company acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in CPS Energy's possession, including materials submitted by Company, are subject to the provisions of the Public Information Act, Texas Government Code, Chapter 552. If Company believes information or materials submitted to CPS Energy constitute trade secrets, proprietary information or other information that is excepted from disclosure under the Public Information Act, Company shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Nothing contained in this section shall modify or amend requirements and obligations imposed on CPS Energy by the Public Information Act or other applicable law, and the provisions of the Public Information Act or other laws shall control in the event of a conflict between the procedures described above and the applicable law.

10. COMPLIANCE WITH LAWS

- a. Adherence to Laws. Each party and its representatives or agents agree that in carrying out their duties and responsibilities under the Agreement, they will neither undertake nor cause, nor permit to be undertaken, any activity which either (i) is illegal under any applicable laws, ordinances, codes, decrees, rules, or regulations of the state and local governments, or in effect in the United States, including, but not limited to, Employment and Labor related laws, rules or regulations, or (ii) would have the effect of causing the other party to be in violation of any laws, ordinances, codes, decrees, rules, or regulations of the state and local governments, or in effect in the United States. Each party and its representatives or agents shall protect and indemnify the other party and its officers and agents against any claim or liability arising from or based on any violation of the same.
- b. Licenses. Company shall obtain all necessary permits, licenses, and any other forms of documentation required to deliver the Goods, Software, and/or Deliverables and to perform the Services provided hereunder at its sole cost unless the law or regulation governing such permitting or licensing requires that CPS Energy do so. Upon request, Company shall promptly furnish CPS Energy copies of all permits, licenses or other documentation applicable to the Agreement.
- c. Data Privacy. Company agrees that if, as part of the performance of the Agreement, it has possession of, or access to, any data that is subject to legal or regulatory privacy or security requirements under the laws of any jurisdiction where Company or CPS Energy or a third party to whom the data belongs or to whom it refers is located, it shall comply with such laws, and shall not do anything or omit to do anything which would cause CPS Energy or any third party associated with CPS Energy (including without limitation, a CPS Energy customer) to breach any such

laws. Company shall not sell or use CPS Energy data other than as may be expressly authorized by CPS Energy in an Order. Company shall not transfer (logically or physically) CPS Energy data to any country or territory outside the United States of America unless required in Company's performance under the Agreement, provided Company notifies CPS Energy prior to such transfer. Company shall not provide CPS Energy data to any subservice or subcontractor unless expressly authorized by CPS Energy in an Order. Company shall track the usage of CPS Energy data and maintain the ability to immediately destroy or sanitize CPS Energy data at the written request of CPS Energy, which shall not exceed 24 hours after CPS Energy's request.

- d. Compliance with CDL Regulations. If the Agreement requires Company's employee(s) to obtain a commercial driver's license in order to perform hereunder, Company shall abide by the regulations promulgated by the Department of Transportation ("DOT"), Federal Motor Carrier Safety Administration ("FMCSA"), which states that Companies subject to FMCSA mandates shall be in compliance with those parts of 49 Code of Federal Regulations ("CFR") which relate to the illegal use of alcohol and controlled substances. CPS Energy may require Company to provide proof of compliance and CPS Energy will immediately terminate the Agreement if Company is not in compliance with said regulations.
- e. Compliance with Drug and Alcohol Regulations. If Company is subject to FMCSA during performance hereunder, upon CPS Energy's request, Company agrees to provide CPS Energy with an affidavit prior to the date of execution of the Agreement that states Company and its employees have complied with all applicable laws, statutes, and regulations pertaining to ensuring an alcohol and drug-free workplace including, but not limited to, the requirements of 49 CFR as amended by FMCSA. Company also agrees to submit a copy of Company's anti-drug and alcohol plan for drug and alcohol testing prior to the date of execution of the Agreement. Furthermore, Company agrees to allow CPS Energy's Human Resources Drug and Alcohol Program Administrator and/or representative(s) periodic on-site access to Company's records documenting compliance with the same. Company will provide the name and contact person for the agency or consortium used by Company to comply with this requirement prior to the date of execution of the Agreement.

11. SECURITY & SAFETY (as applicable)

- a. Applicability. As an operator of critical infrastructure, CPS Energy is committed to the highest security standards. Moreover, CPS Energy is subject to certain regulatory requirements to ensure its systems are protected from access, sabotage or other threats. Accordingly, the provisions of this Section 11 are required in all CPS Energy contracts and shall apply to all Companies (i) provided access to CPS Energy's facilities; (ii) provided access to third party premises on behalf of CPS Energy; (iii) provided access to CPS Energy networks; (iv) providing SaaS, IaaS, PaaS or other similar hosted Services; and/or (v) taking, utilizing, transferring or otherwise provided access to CPS Energy Information (as defined in Addendum B).
- b. Data Security and Privacy Policies. Company shall comply with the Data Security and Privacy addendum attached hereto as "Addendum B."
- c. General Security. Company personnel must comply with CPS Energy's security requirements, as they may be modified from time to time, including but not limited to (i) on-site security requirements, (ii) the CPS Energy Security Policies addendum attached hereto as "Addendum D.", and (iii) if provided access to CPS Energy Generation Facilities, the Company Personnel On-Site at CPS Energy Generation Facilities addendum attached hereto as "Addendum H."
- d. Training. Company shall not receive access to CPS Energy facilities or networks until Company and its employees and agents have successfully completed all required training by CPS Energy. Such training may include, but is not limited to, information and data security training, physical security training, security awareness training, and North American Electric Reliability Corporation ("NERC") training.
- e. CIP Compliance. Company shall comply with the provisions of Addendum N, if attached hereto, which shall be applicable for Goods or Software provided by Company to CPS Energy or the use of Goods or Software provided by Company to CPS Energy for use in BES Cyber Systems, and applicable for all Company personnel including contracted personnel requiring: (i) authorized unescorted physical access to CPS Energy control centers, line control houses, data centers, or spaces that house BES Cyber Systems; (ii) authorized cyber access (through the use of a login ID and password and/or Interactive Remote Access (IRA) to BES cyber systems; (iii) access to sensitive

documents or BES Cyber System Information such as system drawings, diagrams, or any restricted information; and/or (iv) as determined by CPS Energy to ensure CPS Energy's compliance with the NERC CIP reliability standards.

- f. Contractor Safety Passport Program. Company personnel engaged to perform hazardous work at CPS Energy facilities and/or customer property are required to participate in and fulfill the requirements of the CPS Energy Contractor Safety Passport Program (the "**Program**") attached hereto as "Addendum G."
- g. Noncompliance / Injunctive Relief. Failure to fulfill all requirements of the Contractor Safety Passport Program or any policy required under this Section 11, if applicable, constitutes a material breach of the Agreement, and shall serve as grounds for immediate termination by CPS Energy. If Company breaches the requirements of this Section 11, CPS Energy will be entitled to seek, in addition to all other rights and remedies available under applicable law, injunction, temporary restraining order, protective order, specific performance, or any other equitable relief, from any court of competent jurisdiction, restraining any violation or threatened violation of any terms of this Section 11, it being agreed that money damages alone would be inadequate to compensate CPS Energy and would be an inadequate remedy for such breach.

12. WARRANTIES

- a. Goods. In addition to any warranties stated in the Documentation for Goods, Company gives the following warranties:
 - i. *Standard Warranty – Reseller*. For Goods not manufactured by Company, Company warrants it is an authorized distributor/reseller of the Goods. Company warrants and guarantees that the manufacturer's warranty of the Goods supplied under the Order apply through Company and Company shall assign to CPS Energy, or obtain for CPS Energy's benefit, the manufacturer's warranties for all Goods procured or used under the Agreement. Company warrants that all Goods shall be factory/manufacture warranted in quality and workmanship, new and unused in all cases, free from defects, and shall conform to applicable manufacturer specifications for a period no less than one (1) year from the date of shipment. Company shall notify and obtain written approval from CPS Energy prior to fulfillment of an Order for any Goods which do not meet these minimum requirements.
 - ii. *Standard Warranty – Manufacturer*. For Goods fabricated or manufactured by Company, Company warrants that for one (1) year from the date of shipment or longer as identified in the Order, the Goods will: (i) conform to the Documentation; (ii) be free from defects in design, workmanship, and material; (iii) be merchantable and fit for the purpose intended; (iv) meet the specifications stated in the applicable Order; (v) be new and unused in all cases; and (vi) be of the best quality, provided, however, that if the Documentation states a warranty period of longer than one (1) year, then the warranty period shall be the period stated in the Documentation.
 - iii. *Notice of Defective Goods*. CPS Energy or its authorized representatives are under no duty to discover latent or patent defects in the Goods. However, if during any stage or prior to expiration of the warranty period, CPS Energy determines that the Goods or any part of the Goods does not comply with the warranties ("**Defective Good(s)**"), CPS Energy shall so notify the Company in writing and specify the applicable requirement not satisfied by the Good(s) in question.
 - iv. *Repair/Replace*. Upon receiving such notice, Company shall take all necessary action, including all material, labor and travel expenses, to promptly, and in the most expedient manner, modify, repair, correct and replace the Goods, at Company's sole expense. Company recognizes that CPS Energy's operational requirements may require immediate repairs or reworking of defective Goods or supply of conforming Goods, without notice to Company. In such an event, Company shall reimburse CPS Energy for the costs, delays or other damages that CPS Energy incurs resulting from Company's failure to provide conforming Goods. CPS Energy shall provide clear access to the Goods and all information available to support detecting the root cause of the problem. The cost of all corrective measures, including removal and re-installation, and repair to any other facilities or work damaged by the non-conforming Goods, shall be borne by Company. Unless otherwise agreed in writing, Company shall only procure or use new OEM Goods for warranty work. The warranty period for replacement parts shall be one (1) year commencing upon the earlier of (i) installation, or (ii) one (1) year from the date of CPS Energy's receipt of the replacement parts.

- v. *Failure to Correct.* If Company does not correct Defective Goods within a reasonable time not to exceed thirty (30) days after receiving written notice from CPS Energy, CPS Energy shall have the right to either (1) correct the defect(s) at Company's expense, or (2) reject the Goods and return the Goods in question to Company at Company's expense, or (3) obtain from Company a refund of the cost of the Goods, and charge Company for all additional expenses and costs incurred in obtaining conforming replacements for the Goods in question.
 - vi. *Fines and Penalties.* Notwithstanding any purported limitation of liability to the contrary contained in the Agreement, Company shall be liable to CPS Energy for any fines and penalties CPS Energy incurs as a result of the Defective Goods.
 - vii. *Continuing Defect.* If any Defective Goods are repaired by Company and continue to evidence signs of problems, CPS Energy may require Company to replace the Goods with substitute Goods.
 - viii. *Exclusions to Warranty.* The limited warranties contained in this Section shall not apply to: (a) Goods that have been repaired or modified without Company's authorization or approval; (b) Goods that have been subjected to misuse, abuse, improper maintenance, negligence or accident, by a party other than Company or under the control or direction of Company; or (c) Goods that have not been stored, installed, operated and maintained in accordance with Company's manuals, instruction books, or written recommendations provided by Company to CPS Energy.
 - ix. *Other Warranties.* Nothing in this warranty limits or voids any supplier's, manufacturer's, or other warranty set forth in or required under the Documentation, including technical information, specifications, configuration information, designs, plans, drawings, writings, and/or schematics provided by CPS Energy to Company prior to fulfillment of an Order which provides CPS Energy with additional and/or greater warranty rights than set forth in this section.
- b. Software. In addition to any warranties stated in the Documentation for Software, Company gives the following warranties:
- i. *Standard Warranty.* The Software will perform substantially in accordance with the Documentation, any specifications stated in the applicable Order, and, as of the time of delivery, be free from harmful, disabling, malicious, or hidden mechanisms or code that could cause damage or interfere with the normal function of the Software or the information technology systems on which they are installed. The warranty stated in this section shall extend for ninety (90) days from the date of receipt of the media on which the Software is delivered, provided, however, that if the Documentation states a warranty period of longer than ninety (90) days, then the warranty period shall be the period stated in the Documentation.
 - ii. *Media.* If the Software is delivered to CPS Energy on tangible media, the media on which the Software is delivered will be free from material defects for a period of ninety (90) days from receipt, provided, however, that if the Documentation states a warranty period of longer than ninety (90) days, then the warranty period shall be the period stated in the Documentation.
 - iii. *Additional Warranties.* No Software is subject to any license that would require: (i) redistribution of the Software on a no-fee basis, (ii) the publication of the source code for the Software, or (iii) the licensing of the Software under an open source license.
 - iv. *Remedy.* Upon receipt of a warranty claim notice from CPS Energy, Company will promptly correct or replace any non-conforming Software, provided that CPS Energy shall comply with Company's commercially reasonable warranty return process. If Company, through the use of commercially reasonable efforts, is unable to correct or replace any non-conforming Software, then Company shall refund the purchase price paid for the Software and reimburse CPS Energy for its shipping and other direct costs of procurement of the Software.
- c. Services / Deliverables. In addition to any warranties stated in the Documentation for Services and/or Deliverables, Company gives the following warranties:
- i. *Standard Warranty.* Company hereby represents and warrants to CPS Energy that all material statements and materials regarding its qualifications to perform the Services and produce the work or Deliverables contemplated under the Agreement are materially true and correct and are not misleading or incomplete for

any reason, including by reason of omission. Company represents and warrants that its personnel assigned to provide the Services and/or produce the Deliverables have appropriate training, skill, and experience to provide the Services and/or Deliverables in accordance with the warranties stated herein and that the Services shall be performed in a manner consistent with the highest industry standards. Company acknowledges that CPS Energy and its agents, representatives and contractors shall be entitled to rely on the expert quality of information contained in the Deliverables and the sufficiency and accuracy of the representations, plans and processes, supporting data, technical specifications and special provisions embodied in the Deliverables, provided, however, that Company shall not be responsible for any inaccuracies or insufficiencies contained in the Deliverables to the extent resulting from incomplete or inaccurate information supplied by CPS Energy.

- ii. *Warranty Period / Remedy.* The warranty period for Services and Deliverables shall be one (1) year. Company shall re-perform any part of the Services or redeliver any part of the Deliverables that fail to meet the warranties stated above, provided that CPS Energy gives notice of such failure within one (1) year of completion of the Services or delivery of the Deliverables. If Company, through the use of commercially reasonable efforts, is unable to correct the defect to the reasonable satisfaction of CPS Energy, then Company shall refund the Fees related to the defective Service or Deliverable.
- d. Additional Company Representations and Warranties. Company makes the following additional representations and warranties:
 - i. *Title.* Upon payment, CPS Energy shall acquire good and marketable title to all Goods, Software, and/or Deliverables, free and clear of liens and encumbrances. If CPS Energy receives notice of a lien or claim on Company's delivered Goods, Software, Deliverables and/or Services, Company shall, at its own expense, take all action necessary to cause the lien or claim to be released or discharged immediately, or secure and file a security bond covering the amount of the lien or claim, at CPS Energy's election. Upon CPS Energy's request, Company shall provide evidence that the lien or claim has been released, discharged or secured. If Company fails to furnish adequate evidence within ten (10) calendar days of the demand, CPS Energy may discharge the indebtedness and deduct the total of all costs and fees from any money owed to Company;
 - ii. *Network Corruption.* Company shall not introduce into any CPS Energy information technology system any virus, disabling code, malware, trap, or other set of computer instructions that are designed to usurp or damage the normal operation of, or allow covert access to, a computer, computer system or computer network, or deny access to or corrupt data;
 - iii. *Company Documentation.* Company's Documentation shall be substantially accurate and complete; and
 - iv. *No Litigation.* As of the Effective Date, there are no actions, suits or proceedings pending or threatened against Company, Company's representatives, or Company's subcontractors alleging infringement, misappropriation, or other violation of any intellectual property rights related to any Goods, Software, Deliverables, or Services contemplated by the Agreement.
- e. Warranty Disclaimer. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THE AGREEMENT, COMPANY MAKES NO WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES PROVIDED IN THIS SECTION 12 SHALL BE CPS ENERGY'S SOLE REMEDY WITH RESPECT TO ANY WARRANTY CLAIM UNDER THE AGREEMENT.

13. LIMITATION OF LIABILITY

NEITHER PARTY (NOR ITS EMPLOYEES, AGENTS, SUPPLIERS OR AFFILIATES) SHALL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND ARISING IN CONNECTION WITH THE AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING THE FOREGOING, NOTHING IN THE AGREEMENT LIMITS OR EXCLUDES EITHER PARTY'S LIABILITY FOR LOSS OR DAMAGE CAUSED BY ITS GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR ANY FRAUD OR FRAUDULENT MISREPRESENTATION, AND NOTHING CONTAINED



IN THE FOREGOING IS INTENDED IN ANY WAY TO LIMIT INDEMNIFICATION OBLIGATIONS FOR THIRD PARTY CLAIMS OR THE RECOVERY AVAILABLE TO CPS ENERGY TO THE EXTENT IT IS COVERED UNDER THE APPLICABLE POLICIES OF INSURANCE STIPULATED IN "ADDENDUM A," TITLED "MINIMUM INSURANCE REQUIREMENTS."

14. INDEMNIFICATION

- a. GENERAL INDEMNIFICATION. TO THE EXTENT PERMITTED BY LAW, EACH PARTY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS (COLLECTIVELY "**INDEMNIFICATION**") THE OTHER PARTY, ITS EMPLOYEES, PRINCIPALS, OFFICERS, AND AGENTS (COLLECTIVELY, THE "**INDEMNIFIED PARTIES**" AND INDIVIDUALLY, AN "**INDEMNIFIED PARTY**") FROM AND AGAINST THIRD-PARTY CLAIMS, DEMANDS, LIABILITY, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S FEES AND COSTS OF DEFENSE) (COLLECTIVELY, "**CLAIMS**" AND INDIVIDUALLY, A "**CLAIM**") FOR (I) BODILY INJURY, SICKNESS, DISEASE OR DEATH, AND (II) LOSS, DAMAGE, OR DESTRUCTION TO PROPERTY, IN EACH CASE CAUSED OR PURPORTED TO HAVE BEEN CAUSED BY THE NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT OF THE INDEMNIFYING PARTY (INCLUDING INDEMNIFYING PARTY'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUBCONTRACTORS). TO THE EXTENT THAT ANY CLAIM ARISES FROM THE CONCURRENT CONDUCT OF CPS ENERGY, COMPANY, AND/OR ANY THIRD PARTY, IT IS EXPRESSLY AGREED THAT EACH PARTY'S OBLIGATIONS OF INDEMNIFICATION UNDER THIS SECTION SHALL BE EFFECTIVE ONLY TO THE EXTENT OF EACH PARTY'S PRO RATA SHARE OF LIABILITY.
- b. INTELLECTUAL PROPERTY INDEMNIFICATION. COMPANY WILL DEFEND AND INDEMNIFY CPS ENERGY INDEMNIFIED PARTIES, AGAINST ANY THIRD PARTY CLAIM THAT THE GOODS, SOFTWARE, DELIVERABLES, OR SERVICES INFRINGE ON THE THIRD PARTY'S PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT (EACH, A "CLAIM"), AND INDEMNIFY CPS ENERGY INDEMNIFIED PARTIES FROM ALL RESULTING LOSSES, DAMAGES, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES). COMPANY MAY SETTLE, AT ITS SOLE EXPENSE, ANY INDEMNIFIED CLAIM FOR WHICH COMPANY IS RESPONSIBLE UNDER THIS SUBSECTION. Company's indemnification obligations hereunder shall not apply for any claim of infringement to the extent based on any modification of the Goods, Software, Deliverables, and/or Services by an entity other than Company or its agents or any use of the Goods, Software, Deliverables, and/or Services in combination with other Goods, Software, Deliverables, and/or Services not furnished or approved by Company. If the Goods, Software, Deliverables, and/or Services, or any part thereof, is held to constitute an infringement and its use is enjoined, Company, at Company's option and expense, shall (i) procure for CPS Energy the right to continue using the Goods, Software, Deliverables, and/or Services, or relevant part thereof, (ii) replace it with non-infringing Goods, Software, Deliverables, and/or Services which is, in CPS Energy's reasonable determination, consistent with the standards reflected by the Agreement, or (iii) modify the Goods, Software, Deliverables, and/or Services or relevant part thereof in a way that is, in CPS Energy's reasonable determination, consistent with the standards reflected by the Agreement so that it becomes non-infringing. In the event Company is unable to achieve any of the options set forth above within a reasonable period of time or, in the reasonable opinion of CPS Energy, Company is unlikely to achieve such options within a reasonable period of time, CPS Energy shall have the right to immediately terminate all or part of the Agreement with respect to the affected Goods, Software, Deliverables, and/or Services and Company shall promptly refund CPS Energy the Fees paid for such affected Goods, Software, Deliverables, and/or Services.
- c. Third Party. For purposes hereof, "third party" shall mean a person or entity wholly unrelated to the indemnified party or any affiliate thereof, and shall not include any affiliate, subsidiary, holding, division, parent company, partner, insurer, successor or assignee of the indemnified party or any other person or entity under the control or acting in concert with the indemnified party, whether directly or indirectly.
- d. Indemnification Procedure. If any third party makes a Claim covered by this section against an Indemnified Party with respect to which the Indemnified Party intends to seek Indemnification under this Agreement, the Indemnified Party shall give prompt written notice of the Claim to the indemnifying party, including a brief description of the

amount and basis for the claim, if known. Upon receiving such notice, the indemnifying party shall be obligated to defend the Indemnified Parties against the Claim, and shall be entitled to assume control of the defense and settlement of the Claim so long as settlement completely releases the Indemnified Parties from all liability with respect to the Claim and contains no admission of fault. The Indemnified Parties, upon indemnifying party's request and at indemnifying party's expense, shall furnish all information reasonably available to the Indemnified Parties and cooperate in every reasonable way to facilitate the defense and settlement of any Claim, subject to rights of privilege or similar rights. The Indemnified Parties may participate in the defense and settlement of the Claim at its own expense, using its own counsel, but without any right of control. The indemnifying party shall keep the Indemnified Parties reasonably apprised as to the status of the Claim. Neither the indemnifying party nor any Indemnified Party shall be liable for any settlement of a Claim made without its consent, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Indemnified Parties shall retain responsibility for all aspects of the Claim that are not subject to Indemnification by the indemnifying party hereunder.

15. INSURANCE

- a. Minimum Insurance Requirements. Company agrees to carry and keep insurance in full force during the Term sufficient to fully protect CPS Energy from all damages, claims, suits and/or judgments including, but not limited to, errors, omissions, violations, fees and penalties caused or claimed to have been caused by, or in connection with the performance or failure to perform under the Agreement by Company, Company's agents or employees, a Company Subcontractor, or its agents or employees. The minimum amount of insurance as required shall be in accordance with "Addendum A" titled "Minimum Insurance Requirements." Company's insurance shall be primary to and non-contributory with any self-insurance and/or insurance maintained by CPS Energy. Unless otherwise required by CPS Energy in writing, certificates of insurance or copies of insurance policies and policy endorsements required under Addendum A may be remitted to InsuranceServices@cpsenergy.com.
- b. Change in Minimum Insurance Requirements. Should the Minimum Insurance Requirements of CPS Energy change, Company shall be notified in writing and Company shall have sixty (60) days to meet the new requirements. Should the new requirements add materially to Company's cost, Company should notify CPS Energy and request adjustment in Company's compensation.
- c. COVERED CLAIM. NOTWITHSTANDING ANY LIMITATION OF LIABILITY PROVISION THAT PURPORTS TO LIMIT COMPANY'S LIABILITY FOR VARIOUS TYPES OF DAMAGES, CPS ENERGY SHALL NOT BE PRECLUDED FROM CLAIMING RECOVERY AVAILABLE TO CPS ENERGY TO THE EXTENT SUCH CLAIM IS COVERED UNDER ANY INSURANCE AS REQUIRED IN ACCORDANCE WITH ADDENDUM A.

16. ENGINEERING / ARCHITECTURAL SERVICES

- a. Applicability. If Company has been engaged by CPS Energy to perform engineering and/or architectural Services, in whole or in part, the terms set forth in this Section 16 shall govern over any conflicting or inconsistent terms set forth in this Master Agreement, but only for the purposes of the engineering and/or architectural Services performed by Company.
- b. Additional Warranty. Company warrants that all Services performed pursuant to the Agreement shall be performed by qualified personnel with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Company shall be responsible for the completeness and accuracy of its work product, reports, supporting data, drawings, schematics or any other required documents prepared or compiled pursuant to the Agreement. Company warrants that (i) it has exercised, and will continue to exercise, high standards of professional care, knowledge, skill and judgment in performance of its obligations hereunder; (ii) in developing and preparing its drawings, reports, and plans, Company shall use sound professional principles and practices in accordance with accepted industry standards and in conformance with the applicable laws, regulations, ordinances, codes and requirements set forth in the Agreement; and (iii) if notified of any material errors in the Services, it shall use its best efforts to correct such errors at no additional cost to CPS Energy and chargeable to Company for one (1) full year following completion of construction or Services (as applicable). If re-performance is impracticable and



Company has already been compensated for the work that has been verified as incorrect or nonconforming, Company will refund the amount of compensation paid to Company for such nonconforming portion of the Services to include all reimbursables. The fact that CPS Energy has accepted or approved Company's work shall in no way relieve Company of any of its responsibilities. The cost of design necessary to correct errors attributed to Company and any damage incurred by CPS Energy as a result of an error shall be chargeable to Company. Additional construction added to the project shall not be considered the responsibility of Company unless the need for same was created by a negligent act, error, or omission of Company.

- c. Limitation of Liability and Exclusion of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL THE MAXIMUM AGGREGATE LIABILITY OF THE ENGINEER OR ARCHITECT UNDER OR RELATED TO THE AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER STATUTE, EXCEED THE AMOUNT OF COMPENSATION RECEIVED BY THE ENGINEER OR ARCHITECT UNDER THE AGREEMENT. FURTHERMORE, UNDER NO CIRCUMSTANCES SHALL THE ENGINEER OR ARCHITECT BE LIABLE FOR ANY LOSS OF REVENUE, LOSS OF PROFIT, LOSS OF USE, LOSS OF OPPORTUNITY, PURE ECONOMIC LOSS, OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSSES, HOWSOEVER ARISING, INCLUDING THROUGH THE ENGINEER OR ARCHITECT'S GROSS NEGLIGENCE. ALSO, NO CLAIMS SHALL BE BROUGHT AGAINST THE ENGINEER OR ARCHITECT AFTER THE EXPIRY OF 2 YEARS FROM COMPLETION OF THE SERVICES OR EARLIER TERMINATION OF THE AGREEMENT. THIS LIMITATION AND EXCLUSION OF LIABILITY SHALL SURVIVE TERMINATION OF THE AGREEMENT.
- d. SOLE NEGLIGENCE OF COMPANY. COMPANY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CPS ENERGY, ITS EMPLOYEES, PRINCIPALS (PARTNERS, SHAREHOLDERS OR HOLDERS OF AN OWNERSHIP INTEREST, AS THE CASE MAY BE), OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS (COLLECTIVELY, THE "**CPS ENERGY INDEMNIFIED PARTIES**") FROM AND AGAINST ANY THIRD-PARTY CLAIMS, DEMANDS, LOSS, DAMAGE OR EXPENSE ALLEGED TO BE CAUSED SOLELY BY THE NEGLIGENCE, INTENTIONAL MISCONDUCT, OR BREACH OF COMPANY'S OBLIGATIONS UNDER THE AGREEMENT BY THE COMPANY, ITS PERSONNEL OR AGENTS IN CONNECTION WITH THE AGREEMENT. COMPANY SHALL DEFEND THE CPS ENERGY INDEMNIFIED PARTIES AGAINST A CLAIM ASSERTED BY AN INDIVIDUAL ASSIGNED BY COMPANY TO PERFORM THE SERVICES, REGARDLESS OF WHETHER THE CLAIM ALLEGES FACTS THAT CONSTITUTE A BREACH BY COMPANY OF ITS OBLIGATIONS UNDER THE AGREEMENT, EXCEPT TO THE EXTENT SUCH CLAIM IS NOT RELATED TO THE SUBJECT MATTER OF THE AGREEMENT, OR IS BASED ON CPS ENERGY'S VIOLATION OF APPLICABLE LAW OR REGULATION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- e. CONCURRENT NEGLIGENCE OF COMPANY AND CPS ENERGY. TO THE EXTENT THAT ANY CLAIM ARISES FROM THE CONCURRENT CONDUCT OF CPS ENERGY, COMPANY AND/OR ANY THIRD PARTY, IT IS EXPRESSLY AGREED THAT EACH PARTY'S OBLIGATION TO INDEMNIFY AND HOLD HARMLESS UNDER THIS SECTION SHALL BE EFFECTIVE ONLY TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY COMPANY OR THE COMPANY'S AGENT, SUB-CONSULTANT, OR OTHER ENTITY OVER WHICH COMPANY EXERCISES CONTROL. COMPANY SHALL REIMBURSE CPS ENERGY ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO COMPANY'S LIABILITY IN SUCH EVENT.

17. MUNICIPAL PROVISIONS

- a. Applicability. As a municipally owned utility company and a contracting party to the United States Government, CPS Energy is required to adhere to local government code provisions, flow down provisions from such government contracts, and procurement policies. Accordingly, the provisions set forth in this Section 17 are required in CPS Energy contracts and are applicable as set forth herein to contractors engaged by CPS Energy.
- b. Solicitation of Business. Company agrees, that in connection with the Agreement or with any resultant contract or



subcontract, it will not, directly or indirectly, give, offer, or promise, or authorize to tolerate to be given, offered, or promised, anything of value to any entity or individual with the intent to (i) influence any act or decision of such entity or individual, or (ii) induce such entity or individual to use its influence to affect or influence any act or decision in order to assist CPS Energy in obtaining or retaining business, or in directing business to any person. Company agrees to notify CPS Energy immediately of any solicitation, demand, or other request for anything of value, by or on behalf of any entity or individual, relating to the subject matter of the Agreement.

- c. DPAS / Emergencies. Company acknowledges that in order to support energy and critical infrastructure requirements, the Defense Priorities and Allocations System (“DPAS”) may grant CPS Energy a priority rating requiring Company to prioritize CPS Energy Orders in accordance with DPAS regulations. Accordingly, Company agrees to prioritize CPS Energy contracts, particularly under a state of emergency.
- d. Certificate of Interested Parties. If required under the Texas Government Code, Company agrees to submit Form 1295, entitled “Certificate of Interested Parties” online to the Texas Ethics Commission concurrently with the execution of the Order pursuant to the provisions of Texas Government Code Section 2252.908 if an Order executed against this Master Agreement has a value of at least \$1 million dollars. Company understands and acknowledges that the Order will be void if Company fails to timely file this form.
- e. Preservation of Contract Information. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to the Agreement and contractor or vendor agrees that the contract can be terminated if contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.
- f. Utilization of Small Business Concerns.
 - i. *Small Business Concerns.* If an Order offers subcontracting opportunities, both parties to the Agreement agree to comply with the reporting requirements under 48 CFR 52.219-8: Utilization of Small Business Concerns, regarding utilization of Veteran-Owned Small Businesses, Service-Disabled Veteran-Owned Small Businesses, HUBZone Small Businesses, Small Disadvantaged Businesses, and Woman-Owned Small Businesses and 48 CFR 52.219-9: Small Business Subcontracting Plan requirements.
 - ii. *Subcontracting Plan.* If an Order offers subcontracting opportunities, Company shall adopt and deliver to CPS Energy a Subcontracting Plan regarding both large and small, non-minority, minority, HUBZone, service-disabled veteran and/or woman-owned businesses. Company also agrees to submit the Summary Subcontract Report Standard Form 294 or 295, in accordance with the instructions on the form and all supporting documentation as required by governmental directives in the terms of the contract between CPS Energy and the U.S. Government. The aforementioned documentation should be submitted to the CPS Energy Supplier Diversity Coordinator at supplierdiversity@cpsenergy.com. Company may be required to submit a copy to the Director of Small and Disadvantaged Business Utilization, General Services Administration, 18th & F Streets NW, Washington, DC 20405, upon his/her request.
 - iii. *Reporting.* If an Order offers subcontracting opportunities, Company shall submit a monthly report of subcontractor utilization and spend data in a format acceptable to CPS Energy.
 - iv. *Failure to Comply.* Failure to timely supply subcontracting documents and/or failure to adhere to the subcontracting plan may result in the termination of an Order for Cause.
- g. Payment and Performance Bonds.
 - i. If required under the Texas Government Code, coincident with execution of an Order, Company shall furnish a good and sufficient Payment Bond required for performance of the Services pursuant to each Order in which the estimated value is Fifty Thousand Dollars (\$50,000.00) or more. In addition, Company shall furnish a good and sufficient Performance Bond required for performance of the Services in which the estimated value of each Order is over One Hundred Thousand Dollars (\$100,000.00). Each bond will be for an amount not less than one hundred percent (100%) of the estimated value of the Order and each shall be in force until Company has fulfilled its obligations under the Order. The cost of each bond shall be at CPS Energy’s expense.
 - ii. All provisions of the bonds shall be complete and in full accordance with the statutory requirements of the then-current version of TEX. GOV’T CODE § 2253.

- iii. If at any time during the continuance of the Order the surety becomes financially incapable of fulfilling its obligations, CPS Energy shall have the right to require additional and sufficient sureties which Company shall furnish to the satisfaction of CPS Energy within ten (10) days after notice to do so. In default thereof, the Order may be suspended and all payments or moneys due to Company may be withheld, at CPS Energy's sole discretion.

18. MISCELLANEOUS CLAUSES

- a. Independent Contractor. The parties recognize that Company is an independent contractor and nothing within the Agreement shall be construed to create a joint venture, partnership, agency, or other employment relationship between the parties, or as granting a franchise under federal or state law. All Company employees, contractors, representatives, or agents, including those assigned to perform Services at any CPS Energy-owned or leased facility will not be considered an agent or employee of CPS Energy for any purpose. Company will be solely responsible for payment of all compensation owed to its employees, contractors, representatives, or agents, including all applicable federal, state and local employment taxes and will make deductions for all taxes and withholdings required by law. In no event will any Company employee, contractor, representative, or agent be eligible for or entitled to participate in any of the employee benefit plans or similar programs of CPS Energy.
- b. Authority. Company shall at no time hold itself out as an agent, subsidiary, or affiliate of CPS Energy for any purpose, including reporting to any governmental authority, and shall have no authority to bind CPS Energy to any obligation.
- c. Non-Restrictive Relationship. Unless prohibited by another provision herein, Company may provide the same or similar Goods, Software, Deliverables or Services to other customers. CPS Energy may utilize other providers that are competitive with Company.
- d. Conflict of Interest. During the Term of the Agreement, Company shall not undertake any new relationships with parties that give rise to a Conflict of Interest without the written consent of CPS Energy. A "**Conflict of Interest**" includes, but is not limited to, those conflicts which prevent Company or its agents or representatives from professionally and ethically carrying out all terms of the Agreement, an organizational Conflict of Interest, which exists when, because of other activities or relationships with third parties, Company is unable to render impartial assistance, advice, or Services to CPS Energy, Company's objectivity is otherwise impaired, or Company gains an unfair competitive advantage as a result of performance under the Agreement.
- e. Press Releases/Publications. Company shall not disclose the terms of the Agreement or make representations regarding the relationship between the parties under the Agreement as part of a press release or publication without the prior written consent of CPS Energy.
- f. Time of Essence / Days. Time is of the essence of the Agreement and of each covenant or agreement that is to be performed at a particular time or within a particular period of time. Unless otherwise expressly provided herein, all periods for performance, delivery, review or approval and the like shall be determined on a "calendar" day basis. If any day for performance, delivery, review or approval shall fall on a Saturday, Sunday or legal holiday (state or federal) in San Antonio, Texas, the time therefor shall be extended to the next business day.
- g. Waiver. The rights and remedies provided to each of the parties herein shall be cumulative and in addition to any other rights and remedies provided by law or otherwise. Any failure in the exercise by either party of its right to terminate the Agreement or to enforce any provision of the Agreement for default or violation by the other party shall not prejudice such party's rights of termination or enforcement for any further or other's default or violation or be deemed a waiver or forfeiture of those rights.
- h. Right to Audit. Company shall maintain complete and accurate books and records, specifically including, without limitation, the originals or copies of documents supporting entries in Company's books of account, such as time and payroll registers and related third-party invoices, covering all activities and transactions arising out of, or relating to the Agreement. CPS Energy and its duly authorized representatives and any regulatory entity having jurisdiction over CPS Energy shall have the right upon seventy-two (72) hours' notice, during normal business hours for the Term of the Agreement and for a period of two (2) years following termination, to schedule a visit to examine and copy such books, records, documents, and materials under the control of Company, with respect to the subject matter and terms of the Agreement that, in CPS Energy's reasonable judgement, have a bearing on or

pertain to matters, rights, duties, or obligations covered by the Agreement. Company's books and records provided to CPS Energy pursuant to this provision shall be considered Confidential Information and subject to the confidentiality requirements set forth herein.



- i. Force Majeure. Neither party will be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform results from causes beyond its control, including and without limitation: failures or fluctuations in electric power, heat, light, air conditioning or telecommunication equipment, strikes, lockouts, or other industrial disturbances; civil disturbances; fires; acts of God; acts of a public enemy; a pandemic declared by the World Health Organization or a public health emergency declared by the United States Secretary of Health and Human Services (HHS), in either case resulting in the United States Center for Disease Control and Prevention (CDC) or other governmental body or agency imposing restrictions which prevent a party's ability to perform; compliance with any regulations, order, or requirement of any governmental body or agency; or inability to obtain transportation or necessary materials in the open market. Neither party shall, however, be excused from performance if nonperformance is due to causes which are removable or remediable and which the non-performing party could have, with the exercise of reasonable diligence, resolved or remedied with reasonable dispatch. The provisions of this section shall not be interpreted or construed to require either party to prevent, settle, or otherwise avoid a strike, labor stoppage, or other similar labor action. The non-performing party shall, within a reasonable time of being prevented or delayed from performance, give written notice to the other party describing the force majeure circumstances preventing continued performance of the obligations of the Agreement.
- j. Notices. All notices required under or regarding the Agreement must be in writing and will be considered properly given if delivered personally, mailed via registered or certified mail (return receipt requested and postage prepaid), email, or sent by courier (confirmed by receipt) addressed to the parties' address designated in the first paragraph. Notice provided by email to LegalNotices@cpsenergy.com shall not, however, be valid unless receipt of such email is confirmed by CPS Energy via return email or otherwise.
- k. Severability. If any term or provision of the Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Agreement will not be affected. In the event an ambiguity or question of intent or interpretation arises, the Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of the Agreement.
- l. Captions. The section headings in this Master Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Master Agreement.
- m. Entire Agreement. This Master Agreement and the applicable Order(s), and any addenda, exhibits, appendices, amendments and other documents attached to or incorporated herein constitute the entire agreement between the parties regarding the subject matter of the Agreement and supersede any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the Agreement.
- n. Amendments. This Master Agreement may be amended only by an instrument in writing executed by the parties hereto.
- o. Change Authorization Orders. In the event that the parties desire to change the terms of an existing Order, the parties shall prepare and sign a Change Authorization Order ("CAO"), which shall be incorporated into the Agreement. No changes to an Order shall become effective until both parties have signed the CAO. Notwithstanding the immediately preceding sentence, any modification or revision to an Order resulting in cancellation or termination shall be governed by the applicable Cancellation or Termination provision herein, unless otherwise agreed in writing by the parties.
- p. Applicable Law and Venue. The Agreement is performable in San Antonio, Bexar County, Texas, and is governed by the laws of the State of Texas. Exclusive venue for all actions under the Agreement shall be in the state courts of the State of Texas, Bexar County, Texas. CPS Energy's obligations pursuant to the Agreement are subject to Texas Government Code Chapter 1502.
- q. Survival. The following provisions shall survive expiration or termination of the Agreement: Intellectual Property, Confidentiality, Security & Safety, Warranties, Limitations of Liability, Indemnification, Insurance, Right to

Audit, Preservation of Contract Information, Miscellaneous, and any other provisions that by their nature are intended to survive expiration or termination.

- r. Assignment. Neither party may assign the Agreement, or any of its rights or obligations under the Agreement without the prior written consent of the other party, except that either party may assign the Agreement without the written consent of the other party if such assignment is (i) pursuant to a corporate reorganization; (ii) upon a consolidation, merger, reincorporation, sale of all or substantially all of its assets related to the Agreement; or (iii) a similar transaction or series of transactions. Subject to the foregoing, the Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. Any assigning party shall notify the other party within thirty (30) days of any assignment pursuant to these provisions.
- s. Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of the Agreement, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses to the extent permitted by law, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment, provided, however, that any settlement entered into by the parties shall be conclusively deemed to provide the parties the compensation to which they are entitled under this section regardless of whether attorney's fees and costs and expenses are expressly addressed in the settlement agreement executed by the parties.
- t. Successors and Third-Party Beneficiaries. The Agreement shall inure to the benefit of Company and CPS Energy and their respective permitted successors or assigns. No third parties shall have any rights hereunder.
- u. Authorization. Each party represents and warrants that all consents or approvals required of third parties (including, but not limited to, its Board of Directors or partners) for the execution, delivery and performance of the Agreement have been obtained and that each party has the right and authority to enter into and perform its covenants contained in the Agreement.
- v. Signatures. Any documents signed in connection with the Agreement may be signed in multiple counterparts which, taken together, will constitute one original. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures. Each person executing this Master Agreement warrants that he/she is authorized to do so on behalf of the party for whom he/she signs this Master Agreement.

19. ADDENDA

Company shall comply with the following selected addenda, which shall be attached hereto and incorporated herein by reference:

<input checked="" type="checkbox"/> Addendum A:	Minimum Insurance Requirements	 Addendum A_Class 3.docx
<input checked="" type="checkbox"/> Addendum B:	Data Security & Privacy	 Addendum B - Data Security and Privacy (2
<input type="checkbox"/> Addendum C:	Not Used	
<input type="checkbox"/> Addendum D:	CPS Energy Security Policies	
<input type="checkbox"/> Addendum E:	US Government Contracts	



<input type="checkbox"/> Addendum F:	Environmental	
<input type="checkbox"/> Addendum G:	Contractor Safety Passport Program	
<input type="checkbox"/> Addendum H:	Company Personnel On-Site at CPS Energy Generation Facilities	
<input type="checkbox"/> Addendum I:	DOT Compliance	
<input type="checkbox"/> Addendum J:	Performance and Payment Bonds	
<input type="checkbox"/> Addendum N:	CIP Compliance	

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]



IN WITNESS WHEREOF, the parties have executed this Master Agreement as of the Effective Date.

**The City of San Antonio,
acting by and through
City Public Service Board**

Signature

Printed Name

Title

Date

Signature

Printed Name

Title

Date