MUTUAL CONFIDENTIALITY AGREEMENT

This Mutual Confidentiality Agreement (the “Agreement”) is made and entered into as of [date] (the “Effective Date”) by and between the City of San Antonio, acting by and through City Public Service Board (“CPS Energy”) and [name] (“[nickname]”). [nickname] and CPS Energy are sometimes individually referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, CPS Energy and [nickname] intend to engage in discussions and negotiations involving grid resiliency and hardening efforts (the “Project”);

WHEREAS, both Parties desire to reveal and exchange certain Confidential Information (as defined below) for the purpose of enabling each other to fully participate in the Project; and

WHEREAS the Party disclosing Confidential Information is referred to herein as the “Disclosing Party” and the Party receiving Confidential Information is referred to herein as the “Receiving Party”; and

WHEREAS, the Parties desire to ensure that the Confidential Information is retained in strict confidence with each other.

 NOW, THEREFORE, in consideration of the foregoing, the Parties mutually agree as follows:

1. **Disclosure of Confidential Information.** The Disclosing Party shall allow access to or may disclose to the Receiving Party, either orally, in writing, or through data banks, Confidential Information. Confidential Information as used in this Agreement shall mean the information of Disclosing Party which is disclosed to the Receiving Party pursuant to this Agreement and shall include, but not be limited to, any information related to a Party’s performance of, or failure to perform, this Agreement; any information that is marked or designated as “Confidential” at the time of disclosure; any information related to the Disclosing Party’s assets, liabilities, finances, business strategies, product development plans, operations, technology, know-how, trade secrets, inventions, techniques, processes, source code, schematics, designs, 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.
2. **Treatment of Confidential Information.** Receiving Party agrees during the term of this Agreement and thereafter to take reasonable steps to hold in confidence the Confidential Information. Receiving Party agrees to use the Confidential Information solely to perform the Project hereunder. Receiving Party’s obligations with respect to the Confidential Information also extend to any third party’s proprietary or confidential information disclosed to Receiving Party in the course of providing service to Disclosing Party. This obligation shall survive the termination of this Agreement for a period of two (2) years. Receiving Party shall retain all Confidential Information in confidence, exercising the same standard of care used by Receiving Party to protect its own confidential and proprietary information but in no event less than reasonable care, to prevent the disclosure of Confidential Information to any unauthorized third party. Notwithstanding the foregoing, Receiving Party may disclose Confidential Information to its employees or agents (“Representatives”) who need to know such Confidential Information in order to perform or further the provision of the Project. Such Representatives shall have previously agreed, either as a condition to employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those of this Agreement. Receiving Party shall be responsible for the failure of any of its Representatives to comply with the terms of this Agreement.

The term “Confidential Information” will not apply to the extent that the Receiving Party can demonstrate that:

1. such information of the Disclosing Party is, at the time of disclosure, available to the public;
2. such information of the Disclosing Party becomes available to the public, by publication or otherwise, except by breach of the provisions of this Agreement by Receiving Party;
3. such information of the Disclosing Party can be established by written evidence to have been in the possession of the Receiving Party at the time of disclosure;
4. such information of the Disclosing Party is received by the Receiving Party from a third-party without similar restrictions and without breach of this Agreement by Receiving Party;
5. such information of the Disclosing Party was developed by employees or agents of the Receiving Party independently of and without reference to any Confidential Information of the Disclosing Party (the Receiving Party shall bear the burden of proving such independent development); or
6. the Confidential Information of the Disclosing Party is required to be disclosed by a government agency to further the objectives of this Agreement, by applicable law, rule or regulation, or by a proper court of competent jurisdiction; provided, however, that the Receiving Party will use its best efforts to minimize the disclosure of such information and will consult with and reasonably assist the Disclosing Party in obtaining a protective order prior to such disclosure at the expense of the Disclosing Party.

3. **Materials.** All materials including, without limitation, documents, drawings, models, apparatus, sketches, designs, and lists furnished to the Receiving Party by the Disclosing Party, and any tangible embodiments of the Disclosing Party’s Confidential Information created by the Receiving Party, shall remain the property of the Disclosing Party. The Receiving Party shall return to the Disclosing Party all notes and materials created by the Receiving Party based thereon, or destroy all such materials and all copies thereof upon the written request of the Disclosing Party; provided that the Receiving Party shall not be required to return or destroy any generally inaccessible electronic data preserved on backup systems in the ordinary course as part of its standard backup procedures. Notwithstanding the foregoing, the Receiving Party shall be permitted to retain (subject to the terms herein) such Confidential Information as may be required to comply with applicable professional obligations and standards and internal file retention policies based thereon.

1. **Public Statements.** The Parties agree that no public statements or announcements regarding the Project may be made by either Party without the prior written consent of the other Party. Such statements include but are not limited to media statements, press releases, posts in online mediums, interviews whether print or oral, and verbal statements to any third party that may reasonably lead to the public release of such information.
2. **No License.** This Agreement does not grant the Receiving Party any license to use the Disclosing Party’s Confidential Information.
3. **Term.**
4. This Agreement shall terminate two (2) year(s) after the Effective Date unless terminated earlier by either Party. Either Party may terminate this Agreement, with or without cause, by giving notice of termination to the other Party. The Agreement shall terminate immediately upon receipt of such notice.
5. Upon the request of the Disclosing Party, an authorized representative of the Receiving Party shall confirm in writing that the Receiving Party has complied with its obligations in Section 3.
6. Notwithstanding the termination of this Agreement, the Receiving Party’s obligations in Section 2 shall survive such termination for a period of two (2) years.
7. **Successors and Assigns.** Neither Party may assign its rights or obligations arising under this Agreement without the other Party’s prior written consent, and any assignment or transfer without such consent shall be null and void. Subject to the preceding sentence, this Agreement shall be binding upon the permitted successors and assigns of both parties.
8. **Warranty.** All Confidential Information is provided “As Is” and any warranty, express, implied or otherwise, regarding the accuracy, completeness, or performance of the Confidential Information is expressly disclaimed.
9. **General Provisions.**

(a) This 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 this Agreement shall be in the state courts of the State of Texas, Bexar County, Texas.

1. Notwithstanding anything herein, the Disclosing Party shall have the right to seek preliminary relief on any equitable claim in any court of competent jurisdiction, where such judgment is necessary to preserve its property and/or proprietary rights under this Agreement.
2. The Receiving Party agrees that the breach of the provisions of this Agreement by the Receiving Party may cause the Disclosing Party irreparable damage for which recovery of money damages would be inadequate. The Disclosing Party will, therefore, be entitled to seek timely injunctive relief to protect the Disclosing Party’s rights under this Agreement in addition to any and all remedies available at law.
3. 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 unless otherwise expressly prohibited or restricted from doing so by applicable law, rule, regulation, or other legal mandate, the Receiving Party will notify the Disclosing Party promptly in writing so that the Disclosing Party may seek any appropriate protective order and/or take any other action.  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 to a tribunal or other person who or which is making or enforcing such request.
4. Any notice provided for or permitted under this Agreement will be treated as having been given when (a) delivered personally, (b) sent by confirmed telecopy, (c) sent by commercial overnight courier with written verification of receipt, or (d) mailed postage prepaid by certified or registered mail, return receipt requested, to the Party to be notified, at the address set forth below, or at such other place of which the other Party has been notified in accordance with the provisions of this section. Such notice will be treated as having been received upon the earlier of actual receipt or five days after posting.

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| If to CPS Energy: | If to [Nickname]:  |
| CPS EnergyAttn: General CounselP.O. Box 1771San Antonio, Texas 78296 | [Name]Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_[address1][address 2] |

1. This Agreement may be amended or supplemented only by a writing that is signed by duly authorized representatives of both parties.
2. No term or provision hereof will be considered waived by either Party, and no breach excused by either Party, unless such waiver or consent is in writing signed on behalf of the Party against whom the waiver is asserted. No consent by either Party to, or waiver of, a breach by either Party, whether express or implied, will constitute consent to, waiver of, or excuse of any other, different, or subsequent breach by either Party.
3. If any term or provision of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement will not be affected.
4. Nothing contained in this Agreement or in any discussions undertaken or disclosures made pursuant hereto shall (a) be deemed a commitment to engage in any business relationship, contract or future dealing with the other Party, or (b) limit either Party’s right to conduct similar discussions or perform similar work to that undertaken pursuant hereto, so long as said discussions or work do not violate this Agreement.
5. This Agreement constitutes the entire Agreement between the Parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and Agreements, whether written or oral.
6. A signed copy of this Agreement delivered by email or facsimile shall be deemed to have the same legal effect as delivery by mail of an original signed copy of this Agreement.

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

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| **The City of San Antonio,** **acting by and through** **City Public Service Board** |
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| Signature |
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| Printed Name |
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| Title |
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| **[Name]** |
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| Signature |
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