

STATE OF TEXAS

COUNTY OF BEXAR

# EMERGENCY RESPONSE INTERLOCAL COOPERATION AGREEMENT

WHEREAS, City Public Service, "CPS Energy," the City of San Antonio's gas and electric utility, is the current owner of an approximately 7,000 acre tract of land situated in Bexar County, Texas, Agreement ("Property"), reflected in Exhibit A.

WHEREAS, upon the Property are electric generating power Calaveras Power Stations and ancillary facilities which make up the "Calaveras Power Station," as reflected on Exhibits B(1-3).

WHEREAS, the Property and Calaveras Power Station are located outside the jurisdiction of the City of San Antonio ("City"); and

WHEREAS, Chapter 791 of the Texas Government Code provides that governmental entities of the State may contract with each other to provide governmental functions and services and provide fire protection and associated services to protect public health; and

WHEREAS, it is to the mutual benefit of CPS Energy and the City that the Property and the Calaveras Power Station, that are considered critical facilities under state and federal law and supply all electric energy to the City of San Antonio and its residents, be protected from damage and that its workers be protected from industrial and medical danger; and

WHEREAS, the Calaveras Power Station is comprised of complex industrial and electric generating facilities with specialized safety needs, which must be protected from the danger of catastrophic loss of life, equipment and production capacity; and

WHEREAS, the City of San Antonio has a duty to protect its citizens by providing continuous adequate power to its homes and businesses as well as to protect its citizens' considerable investment in the Calaveras Power Station from loss;

NOW, THEREFORE, in consideration of the terms contained in this Agreement, CPS Energy and the City of San Antonio, through their respective governing bodies, agree as follows:

## SECTION 1. SERVICES

1.01 Services Provided. The City agrees to provide emergency response to events occurring at Calaveras Lake and the Calaveras Power Station that require fire protection, fire fighting, HAZMAT and EMS services ("Services") in the same manner and to the same extent as if the Calaveras Power Station were located within the city limits of San Antonio, except as limited by the provisions of this Agreement. City shall provide these Services beginning on May 1, 2023 and ending April 30, 2024. This Agreement will renew each year automatically until May 1, 2033, unless one of the parties terminates this Contract earlier than that date pursuant to the provisions of this Agreement,

1.02 EMS Service. CPS Energy understands and agrees that the City of San Antonio does not normally provide emergency medical services ("EMS") to unincorporated areas of Bexar County. Calls for service shall be made through the San Antonio Fire Department emergency dispatch system. Therefore, although the City will be providing "First Responder" services to the Calaveras Power Station as requested, CPS Energy reserves the right to request First Responder Services from other sources if necessary to obtain the quickest possible response.

1.03 Calls for Service. Any request for aid hereunder by CPS Energy shall include the type of call, the CPS Energy resources that are available for dispatch, the number of personnel and the amount and type of equipment requested if applicable, and the location to which the personnel and equipment are to be dispatched.

## SECTION 2. FEES

2.01 Annual Fee. CPS Energy shall pay the City a basic emergency response service fee of \$30,900.00 for the first year of this agreement for Services provided herein, with an annual increase of 3% annually through year ten of this agreement, with the exception of HAZMAT and EMS Medical Service Fees as provided below, from the City of San Antonio. This fee shall be paid to the City of San Antonio, Attention: Director of Finance, with the fee for the first year paid at the time of execution of this agreement. For all subsequent years the fee shall be paid annually in advance no later than the first day of May during the term of this Agreement. The first year's fees shall be paid within thirty (30) days after this agreement is signed by both parties.

2.02 HAZMAT Fees. The annual fee set forth in 2.01 shall not include the response fee(s) required for hazardous materials (HAZMAT) incidents, as such fee(s) are established in City Ordinances No. 72267 and 76469, and as amended, which shall be in addition to the annual fees under this Agreement.

2.03 EMS Medical Service Fees. This annual fee set forth in 2.01 shall not include the fee(s) required for emergency medical services provided on individual calls for service at the Calaveras Power Station; as such fee(s) are established annually in the City of San Antonio's Budget Ordinance, which shall be in addition to the annual fees under this Agreement.

2.04 There will be an additional fee in the amount of \$100,000.00 to be paid at the same time as the initial annual fee specified in section 2.01, for the purchase by the City of a rescue boat, trailer and supporting equipment, which shall be owned solely by the City. CPS shall have no financial responsibilities for this boat, trailer and equipment, including repair or replacement, and shall not be liable related to the operation of this boat, trailer and equipment. The boat, trailer and equipment, which will be stored on City property, will be used for water rescues and non-life threatening assistance calls on Lake Calaveras, however the city reserves the right to store and use the boat, trailer and equipment at locations other than Lake Calaveras according to the immediate hazards and needs of the City, and to assist other jurisdictions. If the City terminates this agreement prior to the term expiring in April of 2032, the City will, on a prorata basis, reimburse CPS Energy for any time remaining on the ten-year term at the rate of \$833.33 per month following the month after termination.

2.05 Payment from Current Revenues. CPS acknowledges and agrees that all fees paid to the City for Services rendered, as provided above, shall be paid from current revenues available to CPS Energy.

### SECTION 3. INSPECTION

3.01 Buildings to Meet Codes. CPS Energy further agrees that as a condition to receiving Services under the terms of this Agreement, that subject to CPS Energy's reasonable security requirements, persons designated by the City shall be provided reasonable access and permitted to inspect, at reasonable times, Calaveras Power Station structures to be provided Services, to assure that the Calaveras Power Station structures are being maintained consistent with applicable electric industry standards and that Calaveras Power Station equipment and materials are being stored in compliance with all applicable local, state and federal codes, regulations and ordinances.

### SECTION 4. RESPONSE

4.01 Possible Delay. CPS Energy is aware and acknowledges that the City's response time in providing such Services outside the City Limits may involve delay and agrees that the risk is acceptable.

4.02 Fire Command. It is further agreed by CPS Energy that when any building or structure of the Calaveras Power Station is on fire or may be deemed to be hazardous and likely to take fire or communicate the fire to other buildings, the City, through its Fire Chief or designated representative, may do whatever may be deemed necessary

by him for the safety and protection of property and citizens when controlling a fire.

## SECTION 5. TERMINATION

5.01 Termination for Non-payment. This Agreement may be terminated by the City for CPS Energy's non-payment of any undisputed portion of the fees billed by the City under this Agreement, provided CPS Energy is notified of such delinquency and fails to make payment within thirty (30) days following such written notice to CPS Energy.

5.02 Termination by the Parties. CPS Energy or the City of San Antonio may terminate this Agreement for convenience and without cause at any time by giving ninety (90) days prior written notice to the other party.

5.03 Automatic Termination. This Agreement shall automatically terminate, (a) on April 30, 2032; or, (b) when the property on which the Calaveras Power Station facilities are located are annexed by the City of San Antonio, in which case the Calaveras Power Station would receive the same Services as all other property located within the City of San Antonio.

5.04 Failure to Perform. If CPS Energy fails to perform any term contained in this Agreement, and the failure continues for a period of thirty (30) days after CPS Energy's receipt of written notice from the City of that failure, the City shall have the right to terminate this Agreement.

## SECTION 6. LIABILITY AND VENUE

6.01 Liability. Each party shall be liable for any and all costs, claims, liens, damages, causes of action, liability, and suits of any kind and nature arising out of, resulting from, or related to the acts or omissions of all such party's agents, officers, directors, representatives, employees, consultants, or subcontractors.

6.02 Tort Claims Act. CPS Energy acknowledges the City is a political subdivision of the State of Texas and is subject to, and complies with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 et seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

6.03 Notice of Claims. CPS Energy shall promptly advise the City in writing of any claim or demand against the City or CPS Energy known to CPS Energy related to or arising out of CPS Energy's activities under this Interlocal Cooperation Contract and shall see to the investigation of and defense of such claim or demand at CPS Energy's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving CPS Energy of any of its obligations under this contract.

6.04 Limit of Liability. The City will use due diligence in providing fire protection, fire fighting and EMS services to the Calaveras Power Station. The City, however, does not in any way assume to act as an insurer of the Property covered under this Agreement or to pay for any damage that may occur as a result of fire, water, or explosion. Nor does City assume any obligation under the terms of this Fire Services Agreement to construct additional fire stations, purchase additional fire fighting equipment, or hire additional manpower for the protection of the Calaveras Power Station. Rather, CPS Energy understands that it is not entitled to any greater protection than residents located within the City and that City will not be held liable for any additional time required to respond to a fire alarm because the premises and structures of the Calaveras Power Station are located outside the corporate limits of City.

6.05 Venue for Suit. This Agreement will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas and all obligations of the parties are performable in Bexar County, Texas.

## SECTION 7. ASSIGNMENT

7.01 Assignment of Rights. Rights to receive Services under this Agreement are not transferable or assignable by CPS Energy without the prior written consent of the City of San Antonio. Failure by CPS Energy to obtain written consent of the City of San Antonio before assigning any rights under this Contract shall result in automatic termination of the Agreement, and the City shall have no further duty to perform or other liability. The City of San Antonio hereby agrees not to unreasonably withhold consent to the transfer or assignment of rights under this Agreement to any affiliate, subsidiary or parent company of CPS Energy or any succeeding owner of any portion of the Calaveras Power Station.

## SECTION 8. SEVERABILITY

8.01 Severability. If any provision of this Agreement is held invalid or unenforceable under federal, state or local laws, such as the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event, it is the intention of the parties that any unenforceability shall not affect any other provision of this Agreement and that the remainder of this Agreement shall be construed as if such invalid or unenforceable provision was never included.

## SECTION 9. NOTICE

9.01 Notice Requirements. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, by certified mail, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited into the

custody of a nationally recognized overnight delivery service such as Federal Express, addressed to such party at the address hereinafter specified.

9.02 Notice by Mail. Any notice mailed in the above manner shall be effective upon its deposit into the custody of the United States Postal Service or such nationally recognized delivery service as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) days advance notice of such change of address in accordance with the provisions hereof.

If to the City: City of San Antonio  
Attn: City Clerk  
P.O. Box 839966  
San Antonio, Texas 78283-3966

With a copy to: Charles N. Hood, Fire Chief  
San Antonio Fire Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

If to CPS Energy: Attn: General Counsel  
P.O. Box 1771  
San Antonio, Texas 78296  
Email: [LegalNotices@CPSEnergy.com](mailto:LegalNotices@CPSEnergy.com)

## SECTION 10. FORCE MAJEURE

10.01 Force Majeure. Neither party to the Agreement shall be required to perform a duty set out in this Agreement so long as that performance is delayed or prevented by acts of God, strikes, material or labor restrictions by any governmental authority, civil riot, floods, or any other cause not reasonably within the control of either party and which by the exercise of due diligence the party is unable, wholly or in part, to prevent or overcome.

## SECTION 11. ENTIRE AGREEMENT BETWEEN PARTIES

11.01 Entire Agreement. This Contract, together with its authorizing ordinance and exhibits constitutes the final and entire Agreement between the parties. It contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind the parties unless made in writing, as provided in 11.02.

11.02 Amendment Only by Written Agreement. This Agreement may be amended only by the mutual written agreement of the parties, and any such amendment is subject to subsequent approval by each party's governing body.

11.03 Parties Bound by Contract. This Agreement shall bind and benefit the parties to the Agreement and their respective successors and assigns, except as otherwise expressly provided for in this Agreement.

## SECTION 12. EFFECTIVE DATE

12.01 Effective Date. Services shall become effective on May 1, 2023, after being authorized by City Council pursuant to City Ordinance. However, said ordinance shall be of no effect unless CPS Energy has signed and agreed to the provisions of this Agreement.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF SAN ANTONIO

CITY PUBLIC SERVICE

\_\_\_\_\_  
By: Erik Walsh  
City Manager

\_\_\_\_\_  
By: Benny Ethridge  
EVP Energy Supply

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney