

## MEMORANDUM OF AGREEMENT FOR THE SOUTHERN EDWARDS PLATEAU HABITAT CONSERVATION PLAN

This Memorandum of Agreement (“*Memorandum of Agreement*”) for the Southern Edwards Plateau Habitat Conservation Plan (“*SEP HCP*”) is entered into by and between the City of San Antonio, Texas (the “*Administrator*”), as plan administrator on behalf of Bexar County, Texas (the “*County*”) and the City of San Antonio, Texas (the “*City*”), and City Public Service Board (“*CPS Energy*”), dated effective as of the date indicated on the signature page below. The Administrator and CPS Energy are sometimes individually referred to herein as a “*Party*” and collectively referred to herein as the “*Parties*.”

### BACKGROUND

A. The County and the City are the permittees under federal Endangered Species Act (“*ESA*”) incidental take permit number TE-48571B issued by the U.S. Fish and Wildlife Service (“*USFWS*”) dated effective January 18, 2016 (the “*City Permit*”).

B. The City Permit authorizes incidental take of two species of birds and seven karst invertebrate species (the “*City Covered Species*”) that occur in the County, the City, and the City’s extra territorial jurisdiction (the “*SEP HCP Plan Area*”). The two bird species covered by the City Permit are the golden-cheeked warbler (“*GCWA*”) and the black-capped vireo. The seven karst invertebrate species covered by the City Permit are *Rhadine exilis*, *Rhadine infernalis*, Helotes mold beetle (*Batrissodes venyivi*), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Madla cave meshweaver (*Cicurina madla*), Government Canyon Bat Cave meshweaver (*Cicurina vespera*), and Braken Cave meshweaver (*Cicurina venii*) (collectively, the “*City Covered Karst Invertebrates*”).

C. The incidental take authorization for City Covered Species granted by the City Permit is conditioned upon implementation of the SEP HCP and compliance with the terms and conditions of the City Permit. As used herein, “incidental take” shall have the meaning provided in the ESA and its regulations.

D. The Administrator administers the SEP HCP, which includes granting to applicants who enter into agreements with the Administrator the right to receive incidental take authorization through the SEP HCP and the City Permit for the City Covered Species, so long as the applicants agree to implement terms and conditions of the SEP HCP and City Permit, including prescribed mitigation measures.

E. The Administrator may also accept funds from third parties to be used for the conservation of City Covered Species.

F. CPS Energy is the permittee under ESA incidental take permit number ESPER0012435 dated effective October 29, 2021 (“*CPS Energy Permit*”). The CPS Energy Permit authorizes take of certain listed species (“*CPS Energy Covered Species*”) occurring within Bexar County and other counties within the CPS Energy service area (“*CPS Energy Plan Area*”), conditioned upon compliance with the terms and conditions thereof, implementation of the CPS Energy System-wide Habitat Conservation Plan (“*CPS Energy HCP*”), and adherence to the biological opinion issued by USFWS in connection with the agency’s issuance of the CPS Energy Permit. The CPS

Energy Permit, CPS Energy HCP, and the biological opinion are collectively referred to herein as the “**CPS Energy Permit Documents**”).

G. The CPS Energy Covered Species include the GCWA and eight karst invertebrate species: Madla Cave meshweaver (*Cicurina madla*), Government Canyon Bat Cave spider (*Tayshaeta [=Neoleptoneta] microps*), Helotes mold beetle (*Batrisodes venyivi*), *Rhadine exilis*, *Rhadine infernalis*, Government Canyon Bat Cave meshweaver (*Cicurina vespera*), Robber Baron Cave meshweaver (*Cicurina baronia*), and Cokendolpher cave harvestman (*Texella cokendolpheri*) (collectively, the “**CPS Energy Covered Karst Invertebrates**”).

H. The CPS Energy Permit Documents recognize that, to the extent the City Covered Karst Invertebrates and CPS Energy Covered Karst Invertebrates are the same (the “**Covered Karst Invertebrates**”), CPS Energy may utilize the SEP HCP for purposes of obtaining incidental take authorization. A list of the Covered Karst Invertebrates is set forth with specificity in **Exhibit A** attached to this Memorandum of Agreement. The CPS Energy Permit Documents also recognize that CPS Energy may utilize the SEP HCP for purposes of obtaining incidental take authorization for the GCWA (the Covered Karst Invertebrates and GCWA are collectively referred to herein as the “**Covered Species**”).

I. Where CPS Energy utilizes the CPS Energy Permit to authorize incidental take, Section 6.7.1 of the CPS Energy HCP authorizes CPS Energy to mitigate the impacts of such incidental take by engaging in third party mitigation transactions to benefit the affected CPS Energy Covered Species. Sections 6.5.5 and 6.7 of the CPS Energy HCP provide specific requirements for the amount and type of mitigation that must be provided thereunder.

J. This Memorandum of Agreement is being entered into by and between the Parties to establish the process for CPS Energy to utilize the SEP HCP as a third-party mitigation provider for the Covered Species as contemplated in Section 6.7.1 of the CPS Energy HCP.

K. CPS Energy has requested Administrator to authorize CPS Energy’s use of the SEP HCP as a third party mitigation provider in connection with incidental take of Covered Species that is permitted under the CPS Energy HCP and occurs in areas that are within both the SEP HCP Plan Area and the CPS Energy Plan Area (collectively, the “**Covered Area**”) as shown on **Exhibit “B”**, and Administrator has agreed to such request subject to the further terms and conditions in the CPS Energy Permit Documents and as set forth in this Memorandum of Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **AGREEMENT**

1. **Grant of Rights and Obligations of CPS Energy.** The Administrator hereby grants to CPS Energy the right to mitigate through the SEP HCP impacts to the Covered Species that are authorized pursuant to the CPS Energy Permit Documents. CPS Energy represents and warrants that mitigation funds provided to the SEP HCP complies in all respects with the CPS Energy Permit Documents and all applicable laws and regulations. This Memorandum of Agreement covers only CPS Energy mitigation requirements and does not authorize incidental

take of any species listed as endangered or threatened under the ESA. CPS Energy shall coordinate with the USFWS before deviating in any material respect from the mitigation obligations established by the CPS Energy Permit Documents. This Memorandum of Agreement is entered into subject to all terms and conditions of the CPS Energy Permit Documents and applicable law and regulations, and CPS Energy assumes and agrees to be bound by all of such terms and conditions.

2. **Request for Mitigation.** Where CPS Energy has enrolled in the CPS Energy Permit for authorization of incidental take of one or more of the Covered Species, and has identified the SEP HCP as its preferred third-party mitigation provider, CPS Energy shall provide written notice of its request to the Administrator. CPS Energy will, simultaneously with submitting a written request for mitigation to the Administrator, provide to the Administrator a copy of the CPS Energy HCP Enrollment Form (“***Enrollment Form***”), a copy of which is attached as **Exhibit “C”**. As set forth in section 6.3.3 of the CPS Energy HCP, the Enrollment Form documents and confirms both that CPS Energy activities are in compliance with the CPS Energy HCP and that the amount of incidental take authorized under the CPS Energy Permit will not be exceeded. The Enrollment Form also includes a mitigation calculation made in accordance with sections 6.5 and 6.6 of the CPS Energy HCP for each of the CPS Energy Covered Species, as well as specific information concerning the location and extent of CPS Energy activities addressed by the relevant CPS Energy HCP enrollment.

3. **Mitigation Calculation.** Within 30 days of its receipt of a written request for provision of mitigation and copy of the Enrollment Form, the Administrator will provide written confirmation that CPS Energy’s request for mitigation has been received, whether SEP HCP has the requisite amount of mitigation available to provide CPS Energy, or whether SEP HCP would accept CPS Energy’s provision of mitigation funds to procure the requisite mitigation.

4. **Mitigation Fee.** CPS Energy will pay to the Administrator the total sum shown on the “Mitigation Measures” section of the Enrollment Form attached hereto (the “***Mitigation Fee***”). The Mitigation Fee will be calculated pursuant to the CPS Energy HCP as follows:

a. For mitigating impacts to GCWA that are authorized under the CPS Energy HCP, CPS Energy shall pay to Administrator the per-acre GCWA Mitigation Fee in effect at the time CPS Energy requests mitigation from the Administrator.

b. For mitigating impacts to the Covered Karst Invertebrates that are authorized under the CPS Energy HCP, CPS Energy shall pay to Administrator the following Mitigation Fees:

i. \$550 per acre for impacts to lands in karst zone 1, karst zone 2, karst zone 3, and karst zone 4 that are not associated with a karst feature that is occupied or assumed to be occupied by one or more Covered Karst Invertebrates;

ii. \$25,000 per acre for impacts occurring between 345 and 750 feet from the entrance of a karst feature that is occupied or assumed to be occupied by one or more Covered Karst Invertebrates; and

iii. \$400,000 for impacts occurring between 0 and 344 feet from the entrance of a karst feature that is occupied or assumed to be occupied by one or more of the Covered Karst Invertebrates.

c. With respect to the Covered Karst Invertebrates, Administrator will, to the extent practicable, prioritize using Mitigation Fees to contribute to the creation of one or more karst fauna areas (“*KFA*”) or to the expansion of one or more existing KFAs that have been approved by USFWS (“*Approved KFA*”).

5. **Procuring Mitigation.** The Administrator agrees that it will use the Mitigation Fee to provide or procure the amount and type of mitigation required by the Enrollment Form. Within thirty (30) days of Administrator providing or procuring the mitigation set forth on the Enrollment Form, the Administrator will provide written confirmation of the mitigation transaction to CPS Energy.

6. **Default and Termination.** If either Party is in breach or default of any provisions hereof, the non-defaulting Party, as a condition precedent to exercise any of its remedies, must give the defaulting Party written notice of the default (the “Notice of Default”). The defaulting Party shall have 10 days from receipt of the Notice of Default to cure the default. If the default is timely cured, this Agreement shall continue in full force and effect as if such default had not occurred. If either Party is in default beyond any applicable cure period, then the other Party may terminate this Agreement by delivering written notice to the defaulting Party and may seek any damages allowable by law.

7. **Covenants are not Transferrable.** CPS Energy agrees that the covenants provided herein are not intended to be binding upon any of its heirs, successors, and assigns without the written consent of Administrator.

8. **Venue and Choice of Law.** The obligations and undertakings of each of the Parties shall be performable in Bexar County and any county that falls within the Plan Area of the SEP HCP, as set forth in Figure 1 of the SEP HCP. This Memorandum of Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America.

9. **Entirety of Agreement and Modification.** This instrument constitutes the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Memorandum of Agreement are of no force or effect. Any oral representations or modifications concerning this Memorandum of Agreement shall be of no force or effect, excepting a subsequent modification in writing signed by the Party to be charged and expressly approved by an authorized representative of such Party.

10. **Non-Assignment.** CPS Energy shall not sell, transfer, or assign all or any part of this Memorandum of Agreement to a third party without written consent of Administrator, such consent shall not be unreasonably withheld.

11. **Successors and Assigns.** This Memorandum of Agreement shall not be binding upon and does not inure to the benefit of the heirs, successors, and assigns of the respective Parties hereto, except as and where authorized pursuant to this Memorandum of Agreement.

12. **Notice.** All notices under this Memorandum of Agreement shall be in writing and shall be deemed to have been properly given, delivered and received (a) as of the date of delivery if personally delivered, or (b) as of the date of deposit in the mail system if sent by United States certified mail, return receipt requested, postage prepaid. For purposes of notices, the addresses of the Parties are as follows

CPS ENERGY  
Environmental Management  
500 McCullough Ave.  
San Antonio, TX 78215  
Attn: Juan Sandoval, P.G.  
Email: [JASandoval@cpsenergy.com](mailto:JASandoval@cpsenergy.com)  
Phone: 210.353.6510

ADMINISTRATOR:

Southern Edwards Plateau Habitat Conservation Plan  
Plan Administrator  
City of San Antonio, Texas  
Development Services Department  
1901 S. Alamo St.  
San Antonio, TX 78204  
Attn: Melissa Ramirez  
Email: [Melissa.Ramirez@sanantonio.gov](mailto:Melissa.Ramirez@sanantonio.gov)  
Phone: 1.210.207.7038

or to such other address as hereafter shall be designated in writing by the applicable Party and delivered to the other Party.

13. **Term of Memorandum of Agreement.** This Memorandum of Agreement shall terminate upon the expiration or termination of the CPS Energy Permit, unless terminated earlier as provided herein. Termination of this Memorandum of Agreement does not terminate any of the existing obligations of the Parties, as established by this Memorandum of Agreement.

14. **Headings.** The headings at the beginning of the various provisions of this Memorandum of Agreement have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Memorandum of Agreement.

15. **Number and Gender Defined.** As used in this Memorandum of Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.

Executed to be effective as of the last day set forth below.

**ADMINISTRATOR:****CPS Energy:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit List:

Exhibit "A" - List of Covered Species

Exhibit "B" – Map of Covered Area

Exhibit "C" - CPS Energy HCP Enrollment Form

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS

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COUNTY OF

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This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by  
 \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_,  
 a \_\_\_\_\_, on behalf of such \_\_\_\_\_.

 \_\_\_\_\_  
 NOTARY PUBLIC, State of Texas

Print Name: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS

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COUNTY OF

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This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_,  
a \_\_\_\_\_, on behalf of such \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

Print Name: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**EXHIBIT “A”  
TO MEMORANDUM OF AGREEMENT**

**List of Covered Species**

Golden-cheeked warbler	<i>Setophaga chrysoparia</i>	Endangered
Madla’s Cave meshweaver	<i>Cicurina madla</i>	Endangered
Robber Baron Cave meshweaver	<i>Cicurina baronia</i>	Endangered
Government Canyon Bat Cave meshweaver	<i>Cicurina vespera</i>	Endangered
A ground beetle	<i>Rhadine exilis</i>	Endangered
A ground beetle	<i>Rhadine infernalis</i>	Endangered
Government Canyon Bat Cave spider	<i>Tayshanetta [=Neoloptoneta] microps</i>	Endangered
Cokendolpher Cave harvestman	<i>Texella cokendolpheri</i>	Endangered
Helotes mold beetle	<i>Batrisodes venyivi</i>	Endangered



**EXHIBIT “B”  
TO MEMORANDUM OF AGREEMENT**

**Covered Area**

**EXHIBIT “C”  
TO MEMORANDUM OF AGREEMENT**

**CPS Energy HCP Enrollment Form**

