

CONTRACT NO. 473-24-00008
BETWEEN
THE PUBLIC UTILITY COMMISSION OF TEXAS
AND
PATRICK ENGINEERING, INC.

This contract engages a Contractor to: (i) conduct research, analyze data, and prepare reports and recommendations to evaluate critical facility characteristics and requirements in this state for the Texas Backup Power Packages, as described in Public Utility Regulatory Act (PURA) Chapter 34, Subchapter B; and (ii) provide recommended detailed designs and specifications for the Texas Backup Power Packages. Further, the results of the Contractor's research and recommendations may inform the Public Utility Commission of Texas and the Backup Power Packages Advisory Committee's establishment of procedures and rules.

The parties to this contract are the Public Utility Commission of Texas, an agency of the State of Texas, located at 1701 N. Congress Ave., Austin, Texas 78701, and Patrick Engineering Inc., an Illinois corporation, with principal offices at 2150 Western Court, Suite 100, Lisle, Illinois 60532.

Article 1. DEFINITIONS.

When used in this contract, the following terms have the following meanings:

- (1) **"Backup Power Package Advisory Committee"** means the advisory committee described in the Public Utility Regulatory Act (PURA) § 34.0203 and established by Commission rule in 16 TAC § 25.515.
- (2) **"Business day"** means a day other than: (i) a Saturday or Sunday; (ii) a national holiday under Texas Government Code § 662.003(a); or (iii) a state holiday under Texas Government Code § 662.003(b).
- (3) **"Commission"** means the governing body of the PUCT.
- (4) **"Contractor"** includes Patrick Engineering Inc., and any successors, heirs, and assigns.
- (5) **"Critical Facility"** means a facility that materially affects the public health, welfare, and safety, including, but not limited to, those that fall under the definition found in PURA § 17.002 (3-b) for a *Critical Load Industrial Customer* and are crucial for maintaining the necessary services and operations during and immediately following a disaster to ensure public safety and to facilitate recovery efforts. A critical facility does not include those entities that are disallowed under PURA § 34.0205(e)(1), namely, a commercial energy system, a private school, or a for profit entity that does not directly serve public safety and health.
- (6) **"Interconnection"** means the process a generator follows to connect to a grid as referenced in PURA § 35.005 (d), (e), and (g).
- (7) **"May"** means is authorized to.

- (8) **“Parties”** means the PUCT and Contractor. **“Party”** means the PUCT or Contractor.
- (9) **“Proposer”** means a person, organization, business entity, or other entity that submitted a proposal.
- (10) **“PUCT”** means the Public Utility Commission of Texas, an agency of the state of Texas, acting through its Executive Director and/or the agency’s designated contract administrator.
- (11) **“SB 2627 Programs”** means all funding mechanisms, including all grant, loan, and completion bonus grant programs, to support the construction, maintenance, modernization, and operation of electric generating facilities created by Senate Bill 2627 (88th Legislature, R.S.).
- (12) **“Services”** means any and all services performed and any and all goods and products delivered or required to be delivered by Contractor as specified in Exhibit A, Statement of Work (“SOW”).
- (13) **“Statement of Work” or “SOW”** means the description of goods and services to be provided under this contract found in Exhibit A to this contract.
- (14) **“Texas Backup Power Packages”** means the backup power packages described by PURA § 34.0201 and § 34.0204.
- (15) **“Texas Energy Fund”** means the fund in the Texas state treasury outside the general revenue fund to be administered and used by the Commission for the purposes authorized in PURA Chapter 34.
- (16) **“Vendor”** means a person, organization, business entity, or other entity that has been selected for or entered into a contract with a Texas state agency.

Article 2. COMPENSATION.

2.1 Compensation. Contractor agrees to provide all Services (including labor, expenses, and any other services) described in Exhibit A, SOW, to this contract in exchange for compensation as follows:

- Total compensation for the term of this contract will not exceed \$211,700.00 unless amended pursuant to Article 7 of this contract.
- Compensation will be paid in U.S. dollars at the rates defined in the following table:

Task	Fee (in U.S. Dollars)
Package Design (500kW)	48,200
Package Design (1000kW)	48,200
Package Design (1500kW)	48,200
Critical Facility Report	18,600
Review of Regulatory Framework	12,200
Cost/Benefit Analysis of Package Technologies	9,550
Meetings	6,350

Technical Analysis Review, Quality Control/Assurance	20,400
TOTAL	211,700

Contractor understands that the PUCT is not responsible for payment of any costs or expenses exceeding the amounts described in Article 2.1 of this contract.

If Contractor believes that changes in the scope of Services to be performed will require Contractor to increase its fee, it must request the PUCT's written authorization to increase its fee. Contractor must document the changes in the scope of Services and sufficiently explain why they will require additional effort. The PUCT must approve the increase in fee by written amendment to this contract before Contractor performs any Services or may invoice the increased fee.

2.2 Payment Process. Contractor must submit an invoice to the PUCT contract administrator no later than the 15th business day after the month that the Services being invoiced are completed. The invoice must contain the name of the person performing Services and a brief description of work performed. No payment will be made for administrative overhead, overtime, or other costs. On the statement or invoice, Contractor must include a statement that the invoice accurately describes the Services performed and the Services were performed in compliance with the contract. The statement or invoice must include the vendor identification number issued by the Texas Comptroller or Contractor's federal taxpayer identification number and the name and division of the PUCT contract administrator.

Contractor must submit the invoice to the PUCT as follows:

By email to: Payables@puc.texas.gov

Or by mail to: Accounts Payable
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711-3326

The PUCT contract administrator will review the invoice and any other relevant documentation to ensure the Services were performed in compliance with the contract. If the invoice does not contain required information or documentation, or if the PUCT disputes that the Services were performed in compliance with the contract, the PUCT will reject the invoice and will provide written notice to the Contractor of its reasons and provide Contractor with the opportunity to submit a corrected invoice. Upon approval of the invoice, the PUCT will direct payment of the invoice within thirty (30) days of the date the invoice is approved.

2.3 Release of Claims. Contractor's acceptance of payment releases the PUCT of all claims for compensation owed in connection with this contract, except for any claims related to amounts not previously included in the payment or that are subsequently discovered to be owed by the PUCT to the Contractor.

2.4 Refund. Contractor will promptly refund or credit within thirty (30) calendar days any funds the Parties mutually agree were erroneously paid which are not expressly authorized under the contract.

2.5 Payments Made to Subcontractors. Contractor must pay subcontractors, if any, hereunder the appropriate share of payments received not later than the 10th day after the date Contractor receives the payment. The subcontractor's payment is overdue on the 11th day after the date Contractor receives the payment. The PUCT must approve Contractor's use of any subcontractor before Contractor engages the subcontractor, as set forth in Section 5.1 of this contract.

2.6 Records Retention. Contractor shall maintain and retain all records relating to the performance of the contract, including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Contractor for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

2.7 Sole Compensation. Payments under this Article are Contractor's sole compensation under this contract. Contractor must not, without the express written consent of the PUCT and as agreed to by the parties through a written amendment to this contract, incur expenses not contemplated under Exhibit A, SOW, to this contract with the expectation that the PUCT or any other agency of the state of Texas will pay the expense.

Article 3. CONTRACT ADMINISTRATION.

3.1 PUCT Contract Administration. The PUCT designates **Tracie Tolle** to serve as its primary point of contact and contract administrator throughout the term of this contract. Contractor acknowledges that the PUCT contract administrator does not have any authority to amend, terminate, or extend this contract on behalf of the PUCT, except as expressly provided herein. Contractor further acknowledges that such authority is exclusively held by the Commission exercising its authority through a vote in an open meeting or through the Executive Director of the PUCT as the Commission's authorized designee.

3.2 Contractor Contract Administration. Contractor designates its primary contract administrator as follows: **Michael Beech**.

3.3 Reporting. Contractor must report directly to the PUCT contract administrator and must perform all activities in accordance with the reasonable instructions, directions, and requests conveyed to Contractor by the PUCT contract administrator.

3.4 Cooperation. The Parties' contract administrators must handle all communications between them in a timely and cooperative manner. The Parties must timely notify each other by email or other written communication of any change in designee or contact information.

3.5 Media Releases and Publicity. Contractor will promptly refer all inquiries regarding this contract received from state legislators, other public officials, the media, or anyone else not a Party to this contract to the PUCT contract administrator.

Contractor shall not use the PUCT's name, logo, or other likeness in any press release, marketing material, or other announcement without the PUCT's prior written approval. The PUCT does not endorse any Vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the contract, or the services to which they relate without the PUCT's prior written consent, and then only in accordance with explicit written instructions from the PUCT.

Article 4. REPORTS AND RECORDS.

4.1 Written Reports. Contractor will provide written reports to the PUCT in the form and with the frequency specified in Exhibit A, SOW, or as otherwise agreed in writing between the Parties.

4.2 Distribution of Reports. Contractor agrees the PUCT has the right to distribute any report associated with this contract, or to allow another Texas state agency or the Texas legislature to distribute it. The PUCT also has the right to post any report associated with this contract to the PUCT's website or to the website of a standing committee of the legislature. This provision does not waive any right to confidentiality that the PUCT may assert for the report or any portion thereof. To the extent it may be necessary for the PUCT to distribute a draft or interim report, said report shall be clearly marked as a draft or interim report.

Article 5. SUBCONTRACTING PARTIES.

5.1 Use of Subcontractors. The Parties acknowledge and agree that, at the time of execution of this contract, Contractor does not intend to use the services of any subcontractor. Contractor may not subcontract any or all of the work or obligations due under the contract without prior written approval of the PUCT. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of this contract. Should Contractor subcontract any of the Services required in the contract, Contractor expressly understands and acknowledges that in entering into such subcontracts, the PUCT is in no manner liable to any subcontractors of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with this contract.

5.2 Sole Responsibility. Contractor is solely responsible for the quality and timeliness of the work produced by all subcontractors that Contractor may engage to provide Services hereunder and for the timely payment for all work produced by all subcontractors that the PUCT accepts and pays for in accordance with the terms of this contract.

5.3 Prime Vendor Contract. The Parties expressly agree that this contract is intended to constitute a Prime Vendor contract, with Contractor serving as the Prime Vendor for delivery of the Services made the subject hereof. Contractor acknowledges and agrees that it is fully liable and responsible for timely, complete delivery of the Services described in this contract, notwithstanding the engagement of any subcontractor to perform an obligation under this contract.

Article 6. TERM AND TERMINATION.

6.1 Term. The term of this contract will begin on the date of the last signatory to sign the contract and will continue in effect for four (4) years unless sooner terminated under Sections 6.2 or 6.3 of this contract or as a result of the full satisfaction of its terms.

6.2 Termination for Cause by the PUCT. If Contractor fails to provide the Services described in Exhibit A, SOW, or fails to comply with any terms or conditions of this contract, the PUCT may terminate this contract. Prior to termination and at the sole discretion of the PUCT, the PUCT will serve upon Contractor written notice requiring Contractor to cure such default. Unless within thirty (30) days after receipt of said notice by Contractor said default is corrected or arrangements satisfactory to the PUCT, as applicable, for correcting the default have been made by Contractor, the PUCT may terminate this contract for default and will have all rights and remedies provided by law and under this contract. If the PUCT seeks to terminate this contract due to a violation of Section 18.20 of this Contract, the PUCT need not provide any notice or opportunity for curing the default.

6.3 Termination for Convenience. The PUCT reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if the PUCT determines that such termination is in the best interest of the state. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The PUCT shall be liable for payments limited only to the portion of work the PUCT authorized in writing and which Contractor has completed, delivered to the PUCT, and which has been accepted by the PUCT. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. The PUCT shall have no other liability, including no liability for any costs associated with the termination.

6.4 Transfer of Duties. In the event of termination, Contractor will provide reasonable cooperation to transfer its duties under the contract to another entity without disruption to the provision of Services.

6.5 Remedies for Breach. All remedies available to the PUCT for breach or anticipatory breach of this contract by Contractor are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies. Actual damages, cost projections, and injunctive relief may also be invoked either separately or combined with any other remedy in accordance with applicable law.

6.6 Survival. Expiration or termination of the contract for any reason does not release Contractor from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation, the provisions regarding warranty; indemnification; confidentiality; rights and remedies upon termination; Sections 2.3-2.7; 3.5; 4.2; 6.5; 9.2; 17.2; 19.1-19.4; 19.10-19.11; and Articles 10-12; 14-16; 20-24; and 27.

Article 7. ASSIGNMENT, AMENDMENTS, AND MODIFICATIONS.

7.1 Material Change Requests. The PUCT may propose changes to Exhibit A, SOW. Upon receipt of a written request from the PUCT for a change to Exhibit A, SOW, Contractor must, within the deadline specified in the request, or if no deadline is specified, within a reasonable time after the request is received, submit to the PUCT a detailed written estimate of any proposed price

and schedule adjustments to this contract. No changes to Exhibit A, SOW, will occur without the Parties' written consent as provided in accordance with the terms stated in this contract.

7.2 Changes in Law and Compliance with Laws. Contractor shall comply with all laws, regulations, requirements, and guidelines applicable to a Vendor providing services and products required by the contract to the State of Texas, as these laws, regulations, requirements, and guidelines currently exist and as amended throughout the term of the contract. The PUCT reserves the right, in its sole discretion, to unilaterally amend the contract prior to award and throughout the term of the contract to incorporate any modifications necessary for the PUCT's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

7.3 No Assignment of Duties. Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the PUCT. Any attempted assignment in violation of this provision is void and without effect.

7.4 Amendments and Modifications. This contract may not be amended or modified in any manner except by written instrument executed by authorized representatives of the Parties in accordance with the terms of this contract.

7.5 Binding Effect. The contract shall inure to the benefit of, and be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees, and delegates.

Article 8. REPRESENTATIONS, WARRANTIES AND COVENANTS.

8.1 Warranty of Performance. Contractor represents, warrants, and covenants that it will perform the Services outlined in Exhibit A, SOW, with the degree of care and skill ordinarily exercised under similar circumstances by members of its profession performing the kind of services hereunder.

8.2 Warranty of Services. Contractor warrants that the Services will be rendered by the qualified personnel named in Section 19.8 of this contract. If Services provided under this contract require a professional license, then Contractor represents, warrants, and covenants that the activity will be performed only by duly Texas licensed personnel or personnel duly licensed in another state with substantially similar licensing requirements as Texas. Contractor agrees to provide final sealed drawings with professional engineer seals from Texas licensed engineers.

Article 9. RISK OF LOSS AND PROPERTY RIGHTS.

9.1 Risk of Loss. The risk of loss for all items to be furnished hereunder will remain with Contractor until the items are delivered to and accepted by the PUCT, at which time the risk of loss will pass to the PUCT.

9.2 Ownership.

- A. Except for materials where any intellectual property rights are vested in a third party, such as software or hardware, in which case such rights remain the property of the third party, all finished materials, conceptions, or products created, purchased, or prepared for or on

behalf of the PUCT and purchased by the PUCT, or on behalf of the PUCT that the PUCT has accepted as part of the performance of Services under this contract, will be the PUCT's property exclusively and will be given to the PUCT either at the PUCT's request during the term of the contract or upon termination or expiration of the contract.

- B. Other than the materials identified in Section 9.2.A of this contract, all finished or unfinished work product, documents, data, databases, or reports Contractor creates or prepares in the performance of this contract or has created or prepared in the performance of this contract on behalf of the PUCT, are the property of the PUCT.
- C. Contractor must give all finished work product, documents, data, databases, or reports belonging to the PUCT to the PUCT either at the PUCT's request during the term of the contract or upon termination or expiration of the contract.
- D. Upon the expiration of the contract or its termination, Contractor must provide the PUCT with all complete or incomplete documents, data, or records created or prepared in the performance of this contract.
- E. Notwithstanding any other provisions in Article 9 of this contract, materials created, purchased, or prepared exclusively by or for the PUCT or on behalf of the PUCT are the PUCT's exclusive property regardless of whether delivery to the PUCT is effectuated during or upon termination or expiration of this contract.

9.3 Licensed Software. With PUCT's advanced written consent, Contractor may obtain software licenses as an agent of the PUCT for software that is used by Contractor solely for the purpose of providing Services under this contract. Contractor must provide the PUCT with a copy of any software license obtained by Contractor as an agent for the PUCT for the purpose of providing Services under this contract.

9.4 Prior Works. Except as otherwise provided herein, all previously owned materials, conceptions, or products belonging to Contractor that were in existence before the effective date of this contract will remain the property of Contractor and nothing contained in this contract will be construed to require Contractor to transfer ownership of such materials to the PUCT.

9.5 Trademarks. The Parties agree that no rights to any trademark or service mark belonging to another Party or to any non-Party are granted to any other Party by this contract, unless by separate written instrument. The PUCT acknowledges and agrees that use of any trademark associated with any software provided by Contractor under this contract does not give the PUCT any rights of ownership in the trademark or the software.

9.6 Program Information. Program information, data, and details relating to Contractor's Services under this contract must be maintained separately from Contractor's other activities. Contractor must undertake all reasonable care and precaution in the handling and storing of this information.

9.7 Intellectual Property. If all or any part of the deliverables of this contract is the subject of any claim, suit, or proceeding for infringement or misappropriation of any intellectual property right, and in the event of any adjudication that the deliverables or any part thereof infringes or misappropriates any patent, trademark, copyright, or trade secret, or if the licensing or use of any of the deliverables or any part thereof is enjoined, Contractor must, at its expense do one of the

following things: (i) procure for the PUCT the right under such patent, trademark, copyright or trade secret to fully use the deliverables or the affected part thereof; (ii) replace the deliverable or affected part thereof with another non-infringing deliverable; or (iii) suitably modify the deliverable or affected part thereof to make it non-infringing.

9.8 Provision to be Inserted in Subcontracts. Contractor must insert an article containing Sections 9.2.A-9.2.E and 9.6 of this contract in all subcontracts hereunder except altered as necessary for proper identification of the contracting Parties and the PUCT under this contract.

Article 10. PUBLIC INFORMATION ACT.

Information, documentation, and other material in connection with this contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code ("PIA"). In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the PIA, available in a format that is accessible by the public at no additional charge to the State. For the purpose of this section, paper copies, Adobe Portable Document Format files (.pdf), Microsoft Excel spreadsheets (.xls), Microsoft Word documents (.docx), and Hypertext Markup Language (.html) files will be considered accessible by the public, unless another format is specified by the PUCT, at the PUCT's sole discretion.

If information created or exchanged with the state pursuant to this contract is excepted from disclosure under the PIA, Contractor will not be required to make the information available to the public but may be required to facilitate the PUCT's provision of the information to the Office of the Attorney General of Texas for a decision on the information's confidentiality. The PUCT has no duty or responsibility to argue a defense of confidentiality for Contractor's information or data; it will be Contractor's sole responsibility to do so.

The Parties further acknowledge that not all terms of this contract may be confidential under the PIA, regardless of whether those terms are marked "Proprietary", "Trade Secret", or "Confidential." Contractor further acknowledges that in the event of a dispute over the release of a proposal or part of a proposal, the PUCT is bound by the decision made by the Office of the Attorney General of Texas. Additionally, the requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

Article 11. CONFLICTS OF INTEREST AND EMPLOYMENT RESTRICTIONS.

11.1 No Conflicting Relationships. Contractor represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

Further, neither Contractor nor its subcontractors, if any, will apply for a loan or grant under any of the SB 2627 programs nor assist a client to apply for a loan or grant under any of the SB 2627 programs.

11.2 Parties Adverse to the PUCT. Contractor agrees that during the term of this contract and any extensions or renewals thereof, it will neither provide contractual services nor enter into any

agreement, oral or written, to provide services to a person or organization that is regulated or funded by the PUCT or that has interests that are directly or indirectly adverse to those of the PUCT. The PUCT may waive this provision in writing if, in the PUCT's sole judgment, such activities of the Contractor will not be adverse to the interests of the PUCT.

11.3 Notice of Conflict. Contractor agrees to promptly notify the PUCT of any circumstance that may create a real or perceived conflict of interest, whether arising prior to or during the term of the contract. Contractor agrees to use its best efforts to resolve any real or perceived conflict of interest to the satisfaction of the PUCT. If Contractor fails to do so, it will be grounds for termination of this contract for cause, pursuant to Section 6.2 of this contract.

11.4 Prohibited Employment. Contractor agrees that it will not hire any person whose employment with Contractor would violate any of the employment restrictions in Texas Government Code Chapter 572 or Texas Utilities Code Chapter 12.

Further, Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of the PUCT during the twelve (12) month period immediately prior to the date of execution of the contract.

Further, in accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by the PUCT or another agency at any time during the two (2) years preceding the execution of this contract or, in the alternative, Contractor has disclosed the following: (i) the nature of the previous employment with the PUCT or the other agency, (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

Further, pursuant to Section 572.069 of the Texas Government Code, Contractor certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiation for the PUCT involving Contractor within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn.

Article 12. INDEMNIFICATION.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND THE PUCT, AND/OR ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY

GENERAL. CONTRACTOR AND THE PUCT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

12.1 Limitation of Liability. Contractor shall not be liable for any claims, liabilities, losses, damages, or expenses arising out of or in connection with the misuse of Contractor's designs, recommendations, or deliverables by the PUCT or any third party after Contractor has duly performed its Services and submitted any required deliverables under this contract. Contractor shall not be liable for any actions taken by the PUCT or any third party using Contractor's designs, recommendations, or deliverables submitted in connection with this contract to create or implement backup power packages, or any claims, liabilities, losses or damages resulting from failure of same, if occurring without Contractor's direct involvement and supervision and if the implementation of Contractor's designs is not in substantial conformance with Contractor's designs and specifications. Any such actions are taken at the sole risk and responsibility of the PUCT or the third party.

Article 13. INSURANCE.

13.1 Contractor Responsibility. Contractor agrees to comply with all state and federal laws applicable to the liability and payment of Contractor and Contractor's employees, including laws regarding wages, taxes, insurances, and workers' compensation. Neither the PUCT nor the State of Texas will be liable to the Contractor, its employees, agents, or others for the provision of unemployment insurance or workers' compensation or any benefit available to a state employee.

13.2 Minimum Insurance. Contractor must, at its sole cost and expense, secure and maintain as a minimum, from the effective date of this contract and thereafter during the term of this contract and any renewals or extensions thereof, for its own protection and the protection of the PUCT and the State of Texas:

- (a) commercial liability insurance, covering, at a minimum, the following categories of liability within the following limits: (i) bodily injury and property damage - \$1,000,000 limit per occurrence, \$2,000,000 aggregate, (ii) medical expense - \$5,000 limit per person, (iii) personal injury and advertising liability - \$1,000,000 limit, (iv) products/completed operations - \$2,000,000 aggregate, (v) damage to premises rented - \$50,000 limit;
- (b) automobile liability coverage for vehicles driven by Contractor's employees (\$500,000 per occurrence); and
- (c) workers' compensation insurance in accordance with the statutory limits, as follows: (i) employer's liability - \$1,000,000 each incident, (ii) disease - \$1,000,000 each employee and \$1,000,000 policy limit.

The PUCT and the State of Texas must be named an additional insured on the commercial liability and automobile policies.

Insurance coverage must be from companies licensed by the State of Texas to provide insurance with an "A" rating from A.M. Best and authorized to provide the corresponding coverage.

The above referenced limit requirements may be met by any combination of umbrella or excess and primary policies so long as the total limit of insurance requirements is met and the PUCT and the State of Texas are named as additional insureds on the policies.

13.3 Certificates of Insurance. Contractor must furnish to the PUCT certificates of insurance and any applicable endorsements, signed by authorized representatives of the surety or insurers, of all such bonds and insurance and confirming the amounts of such coverage within ten (10) days of the effective date of this contract, and upon request thereafter. Contractor must provide the PUCT contract administrator with timely renewal certificates as the coverage renews. Failure to maintain such insurance coverage specified herein, or to provide such certificates or endorsements promptly, will constitute a material breach of this contract. Contractor must provide thirty (30) days' written notice of any notice for renewal or cancellation of insurance.

Article 14. DISPUTE RESOLUTION

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract.

Article 15. SOVEREIGN IMMUNITY

The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the PUCT or the State of Texas of any immunities from suit or from liability that the PUCT or the State of Texas may have by operation of law.

Article 16. GOVERNING LAW

The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the PUCT.

Article 17. COMPLIANCE WITH LAW

17.1 General. Contractor must comply with all federal, state, and local laws, executive orders, regulations, and rules applicable at the time of performance. Contractor warrants that all Services sold hereunder will have been produced, sold, delivered, and furnished in strict compliance with all applicable laws and regulations to which they are subject. Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities. All laws and regulations required in agreements of this character are hereby incorporated by this reference.

17.2 Taxes. Purchases made for the State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. The PUCT will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. The PUCT shall not be liable for any taxes resulting from the contract, including any taxes associated with Contractor's fee and charge rates.

17.3 Workers' Compensation. Contractor agrees that it will be in compliance with applicable state workers' compensation laws throughout the term of this contract and any renewals or extensions thereof.

17.4 Conflicts of Law. Contractor agrees to abide by the requirements of and policy directions provided by the Texas statutes and the rules and regulations of the PUCT. Contractor agrees to inform and consult with the PUCT when further interpretations or directions are needed in order to fully implement the rules and regulations of the PUCT. In the event that Contractor becomes aware of inconsistencies between this contract and a Texas statute or PUCT rule, Contractor will so advise the PUCT immediately and will cooperate fully to revise applicable provisions of this contract as necessary.

17.5 Compliance with Deceptive Trade Practices Act. Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings. Contractor must comply with Texas Business and Commerce Code Chapter 17.

17.6 Americans with Disabilities Act. Contractor represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.

17.7 Lobbying Prohibition. Contractor represents and warrants that the PUCT's payments to Contractor and Contractor's receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.

17.8 Disclosure of Interested Parties. Contractor must submit to the PUCT a *Certificate of Interested Parties* prior to contract execution in accordance with Section 2252.908 of the Texas Government Code.

Article 18. CONTRACTOR'S CERTIFICATION

By accepting the terms of this contract, Contractor certifies that, to the extent applicable, it is in compliance with the following requirements and prohibitions of Article 18 of this contract. Contractor understands and agrees that a false certification may lead to termination of this contract for cause.

18.1 Prohibitions on Gifts. Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this contract.

18.2 Delinquent Obligations. Contractor is not currently delinquent in the payment of any franchise or sales tax owed to the State of Texas and is not delinquent in the payment of any child support obligations under applicable state law.

18.3 Excluded Parties. Contractor certifies that it is not listed in the prohibited Vendors' list authorized by Executive Order No. 13224, *Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*, published by the United States Department of the Treasury's Office of Foreign Assets Control.

Contractor further represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization as prohibited by Section 2252.152 of the Texas Government Code.

18.4 Antitrust. Contractor represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such a firm, corporation, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws; (2) or communicated directly or indirectly the contents of this contract to any competitor or other person engaged in the same line of business as Contractor.

18.5 Child Support. Under Section 231.006 of the Family Code, the Contractor certifies that it is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate, in addition to other remedies set out in § 231.006(f).

18.6 Prohibited Compensation. Contractor has not received compensation from the PUCT, or any agent, employee, or person acting on the PUCT's behalf, for participation in the preparation of this contract.

18.7 Financial Participation Prohibited. Under Section 2155.004(b) of the Texas Government Code, Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.

18.8 Outstanding Obligations. Contractor agrees that any payments due under the contract will be applied towards any debt or delinquency that is owed to the State of Texas.

18.9 Executive Head of a State Agency. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of the PUCT; (2) a person who at any time during the four years before the date of the contract was the executive head of the PUCT; or (3) a person who employs a current or former executive head of the PUCT.

18.10 Buy Texas. Contractor agrees to comply with Section 2155.4441 of the Texas Government Code relating to use of service contracts and the purchase of products and materials produced in

the State of Texas when they are available at a price and time comparable to products and materials produced outside this state.

18.11 Hurricane Recovery. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

18.12 E-Verify. Contractor certifies that it utilizes and will continue to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons hired to perform duties within Texas during the term of the contract; and
2. All persons (including subcontractors) hired by Contractor to perform work pursuant to the contract within the United States of America.

18.13 Suspension and Debarment. Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration.

18.14 Data Management and Security Controls. In accordance with Section 2054.138 of the Texas Government Code, Contractor certifies that it will comply with the security controls required under this contract and will maintain records and make them available to the PUCT as evidence of Contractor's compliance with the required controls.

18.15 COVID-19 Vaccine Passport. Under Section 161.0085 of the Texas Health and Safety Code, Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract.

18.16 Human Trafficking Prohibition. Under Section 2155.0061 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate.

18.17 Entities that Boycott Israel. If Contractor is required to make a certification pursuant to Section 2271.001 of the Texas Government Code, Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of the contract.

18.18 Energy Company Boycotts. If Contractor is required to make a verification pursuant to Section 2276.002 of the Texas Government Code, Contractor verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract.

18.19 Firearm Entities and Trade Associations Discrimination. If Contractor is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Contractor verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against

a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

18.20 False Statements. If Contractor signs the contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications, or affirmations included in the contract, Contractor will be in default under the contract and the PUCT may terminate or void the contract.

Article 19. GENERAL PROVISIONS

19.1 Independent Contractor. Contractor and Contractor's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the contract. Neither Party is an agent of the other and neither may make any commitments on the other Party's behalf. Should Contractor subcontract any of the services required in the contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), the PUCT is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract. Contractor shall have no claim against the PUCT for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and the PUCT.

19.2 No Quantity Guarantee. The contract is not exclusive to the Contractor. The PUCT may obtain products and related services from other sources during the term of the contract. The PUCT makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the contract.

19.3 Taxes and Statutory Withholdings. Contractor acknowledges that it is not a PUCT employee but is an independent contractor. Accordingly, it is Contractor's sole obligation to report as income all compensation received by Contractor under the terms of this contract. Contractor is solely responsible for all taxes (federal, state, or local), withholdings, social security, unemployment, Medicare, Workers' Compensation insurance, and other similar statutory obligations (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this contract. Contractor must defend, indemnify, and hold the PUCT harmless to the extent of any obligation imposed by law on the PUCT to pay any tax (federal, state, or local), withholding, social security, unemployment, Medicare, Workers' Compensation insurance, or other similar statutory obligation (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this contract. Further, Contractor understands that neither it nor any of its individual employees is eligible for any PUCT employee benefit, including but not limited to, holiday, vacation, sick pay, withholding taxes (federal, state, local), social security, Medicare, unemployment or disability insurance, Workers' Compensation, health and welfare benefits, profit sharing, 401(k) or any employee stock option or stock purchase plans. Contractor hereby waives any and all rights to any such PUCT employment benefit.

19.4 Notice. Except as otherwise stated in this contract, all notices provided for in this contract must be (a) in writing; (b) addressed to a Party at the address set forth below (or as expressly designated by such Party in a subsequent effective written notice referring specifically to this contract); (c) sent by U.S. Mail, certified or return receipt requested, with proper postage affixed; and (d) deemed effective upon the third business day after deposit of the notice in the U.S. Mail.

IF TO THE PUCT:

ATTENTION: Executive Director
1701 N. Congress Ave., 7th Floor
Austin, TX 78701

With copies to the PUCT contract administrator, Jay Stone, CTCD, CTCM, at the same address.

IF TO CONTRACTOR:

ATTENTION: Michael Beech
Patrick Engineering, Inc.
2150 Western Court, Suite 100
Lisle, Illinois 60532

19.5 Headings. Titles and headings of articles and sections within this contract are provided merely for convenience and must not be used or relied upon in construing this contract or the Parties' intentions with respect thereto.

19.6 Export Laws. Contractor represents, warrants, agrees and certifies that it (a) will comply with the United States Foreign Corrupt Practices Act (regarding, among other things, payments to government officials) and all export laws and rules and regulations of the United States Department of Commerce or other United States or foreign agency or authority and (b) will not knowingly permit any non-Party to directly or indirectly, import, export, re-export, or transship any intellectual property or any third party materials accessed by Contractor during the course of this contract in violation of any such laws, rules or regulations.

19.7 Preprinted Forms. The use of preprinted forms, such as purchase orders or acknowledgments, in connection with this contract is for convenience only, and all preprinted terms and conditions stated thereon are void and of no effect. The terms of this contract cannot be amended, modified, or altered by any conflicting terms, provisions, or conditions contained in a proposal or a preprinted form, such as purchase orders or acknowledgements. If any conflict exists between this Contract and any terms and conditions on a proposal, purchase order, acknowledgment, or other preprinted form, the terms and conditions of this Contract will govern.

19.8 Specific Personnel. Contractor has identified the personnel ("Team") for this contract:

- Josh Franklin, Project Manager
- Al Hymans, Lead Engineer
- Christy Hawthorn, Senior Electrical Engineer

- Lucho Arenas-Bowman, Lead Designer, Drafter
- Joseph Sroda, Designer
- David Swoch, QA/QC Engineer
- Chris Erwin, Senior Structural Engineer
- Aitor Makibar, BESS expert

Contractor warrants that it will use its best efforts to avoid any changes to the Team throughout the term of this contract. Should personnel changes occur during the term of this contract or any extensions or renewals thereof, Contractor will recommend to the PUCT personnel with comparable experience and required qualifications and training. The PUCT must approve any change in personnel during the term of this contract in writing. At the PUCT's request, Contractor must replace an individual the PUCT finds unacceptable with an individual satisfactory to the PUCT as soon as practicable.

19.9 No Felony Criminal Convictions. Contractor represents and warrants that neither Contractor, nor any of its employees, agents, or representatives, including any subcontractors and employees, agents or representatives of such subcontractors performing Services hereunder, has been convicted of a felony criminal offense or that, if such a conviction has occurred, Contractor has fully advised PUCT of the facts and circumstances surrounding the conviction.

19.10 No Third-Party Beneficiaries. The contract is made solely and specifically among and for the benefit of the Parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

19.11 Prompt Payment. Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

19.12. Disaster Recovery Plan. Upon request of the PUCT, Contractor shall provide the descriptions of its business continuity and disaster recovery plans.

Article 20. NO IMPLIED WAIVER

The failure of a Party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in the contract shall not be construed as a waiver or a relinquishment thereof for the future.

Article 21. ORDER OF PRECEDENCE

The Parties intend that the provisions of this contract be construed as constituting the entire agreement between the Parties. However, in the event of a conflict, inconsistency, or ambiguity among its provisions, the following documents evidencing the culmination of the Parties' agreement shall govern in the following order:

- (1) Written amendments to this contract and change orders by date order;

- (2) The terms and conditions of this contract;
- (3) Exhibit A, SOW;
- (4) Revised RFP Number: 473-24-00008 Addendum 1;
- (5) The Contractor's response to questions, dated June 19, 2024;
- (6) The Contractor's response to questions, dated June 12, 2024; and
- (7) The Contractor's proposal submitted to the PUCT in response to RFP 473-24-00008 dated May 24, 2024.

Article 22. FORCE MAJEURE

Neither Party shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing Party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either Party and that by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such Party is unable to overcome.

Article 23. SEVERABILITY

If any provision of the contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

Article 24. EXCESS OBLIGATIONS PROHIBITED

This contract is subject to termination or cancellation, without penalty to the PUCT, either in whole or in part, subject to the availability of state funds. The PUCT is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If the PUCT becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either the PUCT's or Contractor's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Article, the PUCT will not be liable to Contractor for any damages that are caused or associated with such termination or cancellation, and the PUCT will not be required to give prior notice.

Article 25. DRUG FREE WORKPLACE POLICY

Contractor must maintain a drug-free work environment and a drug-free work environment policy. Contractor must enforce its drug-free work environment policy during the pendency of this contract. Contractor must provide the PUCT with a copy of its drug-free work environment policy upon request.

Article 26. SUBSTITUTIONS

Substitutions are not permitted without written approval of the PUCT.

Article 27. RIGHT TO AUDIT

Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds by Contractor or any other entity or person directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or any other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the contract and the requirement to cooperate is included in any subcontract awards.

Article 28. DAMAGE TO GOVERNMENTAL PROPERTY.

In the event of loss, destruction, or damage to any PUCT or State of Texas property by Contractor or Contractor's employees, agents, subcontractors, and suppliers, Contractor shall be liable to the PUCT and the State of Texas for the full cost of repair, reconstruction, or replacement of the lost, destroyed, or damaged property. Contractor will reimburse the PUCT and the State of Texas for such property damage within ten (10) calendar days after Contractor's receipt of the agency's notice of amount due.

Article 29. APPROVAL OF DELIVERABLES

The PUCT shall approve each deliverable that conforms in all material respects with the specifications set forth in Exhibit A, SOW, or as otherwise agreed by the Parties in writing ("specifications"). Within three (3) business days (or such other period agreed upon in Exhibit A, SOW, or between the Parties in writing) from its receipt of a deliverable, the PUCT shall provide Contractor with: (i) written approval of such deliverable; (ii) a written statement which identifies in reasonable detail, with references to the applicable specifications, all of the deficiencies preventing approval (the "deficiencies") of the deliverable; or (iii) notification from the PUCT that an additional specified timeframe is required for review. Contractor shall have ten (10) calendar days (or such other period agreed upon in Exhibit A, SOW, or between the Parties in writing) from the date it receives the notice of deficiencies to complete corrective actions in order for such deliverable to conform in all material respects to the applicable specifications. The PUCT shall complete its review of the corrected deliverable and notify Contractor in writing of acceptance or rejection in accordance with the foregoing provisions of this Article.

Article 30. CONFIDENTIALITY

To the extent that, in connection with this contract or Exhibit A, SOW, either Party comes into possession of any confidential information of the other, it will not disclose such information to any third party without the disclosing Party's consent, using at least the same degree of care as it employs in maintaining in confidence its own confidential information of a similar nature, but in no event less than a reasonable degree of care. The disclosing Party hereby consents to the receiving Party disclosing such information: (i) as expressly set forth in Exhibit A, SOW; (ii) to contractors providing administrative, infrastructure, and other support services to the receiving Party and subcontractors providing services in connection with Exhibit A, SOW, in each case, whether located within or outside of the United States, provided that they have agreed to be bound by confidentiality obligations similar to those in this Article; (iii) as may be required by law or

regulation, or to respond to governmental inquiries, or in accordance with applicable professional standards or rules, or in connection with litigation pertaining to this contract or Exhibit A, SOW; or (iv) to the extent such information (A) is or becomes publicly available other than as the result of a disclosure in breach hereof; (B) becomes available to the receiving Party on a nonconfidential basis from a source that the receiving Party believes is not prohibited from disclosing such information to the receiving Party; (C) is already known by the receiving Party without any obligation of confidentiality with respect thereto; or (D) is developed by the receiving Party independently of any disclosures made to the receiving Party hereunder.

Article 31. SIGNATORIES

The undersigned signatories represent and warrant that they have full authority to enter into this contract on behalf of the respective parties.

Article 32. ENTIRE AGREEMENT

This Contract, including Exhibit A, SOW, constitutes the entire agreement and understanding between the parties with regard to its subject matter and supersedes and merges all prior discussions, writings, negotiations, understandings, and agreements concerning the provision of these Services. Any terms and conditions attached to a solicitation will not be considered unless incorporated into this contract by specific reference.

In WITNESS WHEREOF both Parties by their duly authorized representatives have executed this contract, effective as of the date last signed.

The Public Utility Commission of Texas

By:



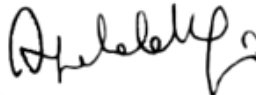
Connie Corona
Executive Director

Date Signed:

7/23/24

Patrick Engineering, Inc.

By:



Angelo Lo Nigro
Energy North America Vice President

Date Signed:

July 23, 2024

EXHIBIT A - STATEMENT OF WORK (SOW)

Exhibit A - STATEMENT OF WORK (“SOW”)

1. Overview

- 1.1. **Introduction:** The Public Utility Commission of Texas (PUCT) issues this Request for Proposals (RFP) to engage a Research Entity (the Contractor). Subject to the PUCT’s oversight and supervision, the Contractor will conduct research, analyze data, and prepare reports and recommendations to evaluate Critical Facility characteristics and requirements in this state for Texas Backup Power Packages as described in Public Utility Regulatory Act (PURA) Chapter 34, Subchapter B. Additionally, the Contractor will provide recommended detailed design and specification for the Texas Backup Power Packages. The results of the research and recommendations may inform the PUCT and advisory committees’ establishment of procedures and rules. The Texas Backup Power Report (the Contractor’s Report) is due on December 2, 2024, and must include, at a minimum, the following:
 - 1.1.1. A quantification and characterization of individual Critical Facilities in the state, including estimated peak demand, to determine the power needs of the various types of Critical Facilities. This information can then be aggregated to be included in estimates of statewide peak demands.
 - 1.1.2. A list of detailed specifications for multiple standardized Texas Backup Power Packages that can be configured to provide up to 2.5 megawatts (MW) of generation and could serve most Critical Facilities across the state.
 - 1.1.3. Engineering diagrams that identify the components necessary to construct standard Texas Backup Power Packages.
 - 1.1.4. Specifications for standard interconnection, communications, and controls for Texas Backup Power Packages.
 - 1.1.5. A list of recommended manufacturers and vendors capable of and eligible to assist with the immediate sale, installation, operation, and ongoing maintenance of Texas Backup Power Packages.
- 1.2. Part 2 of the Statement of Work identifies the Description of Services Requested and Project Deliverables associated with the PURA Chapter 34 programs and presents general obligations applicable to the PURA Chapter 34, Subchapter B programs. The Contractor will be required to complete other tasks on an as-needed basis, as described in more detail in this Statement of Work. Proposers should take into consideration that all requirements of Texas Backup Power Package loan or grant recipients described in this Statement of Work are tentative, pending PUCT rulemaking on these programs, unless they are specifically required by statute.
- 1.3. **Instructions for Proposers.** This Statement of Work is intentionally written to describe broad goals and expected outcomes. Each proposer should ensure their response complies with the purpose of PURA Chapter 34, Subchapter B, which is to facilitate and provide funding for the design, procurement, installation, and use of Texas Backup Power Packages to enhance the reliability or adequacy of an electric power grid in this state for facilities on which communities rely for health, safety, and well-being. The PUCT expects

proposers to describe the processes and methods they would use to accomplish these goals and outcomes within the legal and practical constraints that apply to the PURA Chapter 34, Subchapter B programs. Proposers should propose enforceable deliverables with specific deadlines (deadlines may be specific dates or tied to specific events, milestones, or contingencies) to which they can agree. The final recommendations of the contracted entity must result in viable Texas Backup Power Packages that can be successfully installed and used. The PUCT will negotiate contract enforcement mechanisms, such as tying payments to specific milestones and, where appropriate, specifying liquidated damages for late or unsatisfactory work, including recommended packages that cannot be successfully installed and used, if the anticipated harm caused by the failure to meet deadlines or quality expectations cannot be measured by an estimated monetary amount.

- 1.4. Partnerships. If a Proposer intends to engage with a subcontractor, the Proposer must describe the tasks that will be performed by the Proposer and the tasks that will be performed by the subcontractor.
- 1.5. Minimum Contractor Knowledge and Experience. Proposers must demonstrate knowledge and work experience in the following areas:
 - 1.5.1. The Proposer must have a minimum of ten (10) years of experience in developing and designing stand-alone, behind-the-meter, multiday backup power source technology that can be used for islanding.
 - 1.5.2. The Proposer must have extensive experience in microgrid research and design.
 - 1.5.3. The Proposer must demonstrate the ability to analyze the Critical Facility population, characteristics, and power requirements in this state.
 - 1.5.4. The Proposer must demonstrate the ability to design and demonstrate the feasibility of the Texas Backup Power Packages and make recommendations for Power Packages that comply with all applicable federal, state, and local laws, ordinances, and regulations.
 - 1.5.5. The Proposer must have proven experience designing microgrid technologies with stand-alone motor generators, on-site fuel storage, solar photovoltaic modules, and battery energy storage systems with proven operational success.
 - 1.5.6. The Proposer must demonstrate the ability to be impartial to technologies, configurations, and components in the development of the Texas Backup Power Packages.
- 1.6. Preferred Contractor Knowledge and Experience. Proposers should demonstrate knowledge and work experience in the following areas, if possible. If the chosen proposer lacks experience in any of these areas, the proposer will be expected to explain how they will attain and apply the knowledge as part of the performance of the contract:
 - 1.6.1. Proposers should have experience navigating Texas laws governing state agencies, state government transparency requirements, procurement requirements, contracting prohibitions, and local codes and ordinances that may be applicable.
 - 1.6.2. Proposers should have experience and understanding of the Texas microgrids industry, including delivery models such as “Microgrid as a Service”.

- 1.6.3. Proposers should understand the significant phases of generation build-out including site assessment, Critical Facility electricity demand quantification, permitting, and electric grid interconnection. Proposers should also have a general understanding of unit or facility maintenance for electric generation and delivery systems, including weatherization, resiliency enhancement, facility modernization, and vegetation management.
- 1.6.4. Proposers should have experience in integrating cyber security technologies and capabilities into microgrids.
- 1.6.5. Proposers should have a general understanding of the operation of the Texas energy wholesale markets, inclusive of Electric Reliability Council of Texas (ERCOT), Southwest Power Pool (SPP), and Midcontinent Independent System Operator (MISO) markets.
- 1.6.6. Proposers should highlight any experience in conducting research on microgrids funded by or in partnership with the U.S. Department of Energy or the U.S. Department of Defense.
- 1.7. PUCT Program Support. The PUCT invites proposers to identify areas where PUCT employees may provide support to the Contractor in carrying out its duties as described in this Statement of Work.

2. Description of Services Requested and Project Deliverables

- 2.1. Contractor must perform, at a minimum, the following tasks:
 - 2.1.1. A comprehensive data analysis plan and survey of Critical Facilities related to the Contractor's Report, which must include, at a minimum, the following: a) Preparing a data collection plan, which will provide a list of data sources, types, and formats, and will also describe required or optional data; b) Contacting appropriate individuals, agencies, and organizations to collect any remaining data or validate existing sources; and c) Reviewing such data for appropriate incorporation into the Contractor's Report. The survey must align with the recommendations of the Texas Backup Power Package Advisory Committee in its March 15, 2024, letter to the PUCT, which is included as an attachment to this RFP.
 - 2.1.2. Conduct research, analyze data, prepare reports and recommendations to develop sets of specifications for a minimum of, but not limited to, three (3) standard Texas Backup Power Packages of various levels of generative power capabilities that can serve most Critical Facilities in this state. The number of back-up packages designed should be appropriate to meet the varying power needs of the identified critical facilities as determined by the survey.
 - 2.1.2.1. Proposed methodologies on achieving scalability between the designed Texas Backup Power Packages will be given extra consideration.
 - 2.1.3. Conduct research, analyze data, and prepare reports and recommendations to develop specifications for standard interconnection, communications, controls, and cyber security for Texas Backup Power Packages. Recommended specification should be constructed of open-source, commercially available hardware, and

software, if available. Designs should also consider market and supply constraints and ability to produce the Texas Backup Power Packages to meet the expected demands. Analysis should be provided related to production lead time and availability of components used for microgrid configurations.

- 2.1.4. Contractor's Report must adhere to the specifications in PURA Chapter 34, Subchapter B to align with a stand-alone, behind-the-meter, multiday backup power source that can be used for islanding. Contractor must deliver the Contractor's Initial Report on or before September 1, 2024. The initial report must include the quantification and characterization of Critical Facilities and a recommendation of the corresponding sizes of Texas Backup Power Packages which could be developed to meet the needs of those Critical Facilities. The final report is due December 2, 2024.
- 2.1.5. Contractor must conduct research, analyze data, and prepare reports and recommendations to develop Texas Backup Power Packages that: prefer and prioritize the design of packages which may be fully funded by a program grant at a cost not to exceed \$500 per kilowatt and when not feasible be at a cost as close to \$500 per kilowatt, as possible; are engineered to minimize operational costs and the installed footprint of each package; can operate for at least 48 continuous hours without refueling or connecting to a separate power source; are designed so that one or more Texas Backup Power Packages can be aggregated on-site to serve not more than 2.5 MW of load at the host facility; and provide power sourced from a combination of natural gas or propane with photovoltaic panels and battery storage, as well as providing recommendations for battery storage on an electric school bus.
- 2.1.6. Contractor must conduct research, analyze data, and prepare reports and recommendations to use interconnection technology and controls that enable immediate islanding from the power grid and stand-alone operation for the host facility.
- 2.1.7. Contractor must conduct research, analyze data, and prepare reports and recommendations for optimal types of technology based upon the various specific Critical Facility type requirements.
- 2.1.8. Contractor must conduct research, analyze data, and prepare reports and recommendations for creating a user-friendly tool for applicants to properly size a Texas Backup Power Package for a given facility.
- 2.1.9. Contractor must perform a Cost-Benefit Analysis of proposed technologies and components to aid in the selection of the designs of the Texas Backup Power Packages.
- 2.1.10. Contractor must attend collaborative meetings as requested by PUCT.
- 2.1.11. Contractor must provide updates and status reports on project progress upon PUCT request, but no less than monthly.
- 2.1.12. Contractor must provide final sealed drawings with professional engineer seals from Texas licensed engineers.
- 2.2. Advisory Committee. The Contractor must provide non-confidential information it obtains during the course of its work to the Backup Power Package Advisory Committee upon Advisory Committee Request.

- 2.3. Texas Energy Fund Implementation Contract. The PUCT has contracted with a Vendor to establish, administer, and manage all aspects of the programs expressed in PURA Chapter 34. The Vendor will advise the PUCT on the Texas Backup Power Package research project, and upon PUCT request, the Vendor may provide recommendations to the final Report, and will utilize the Contractor's analysis in the development and implementation of Texas Backup Power Packages programs and systems as described in PURA § 34.0204.
- 2.4. Information Security. The Contractor must describe the procedures it will maintain to ensure the security of all information collected in connection with the tasks described in this Statement of Work.

Texas Backup Power Package Advisory Committee Letter

15 March 2024

Ms. Tracie Tolle
Project Manager, Texas Energy Fund
Public Utility Commission of Texas

The Commission will soon issue a request for proposal for a research entity to conduct a survey of facilities that may qualify for funding under the *Texas Power Promise* of Chapter 34 of the Texas Utilities Code, to inform the design process of the Backup Power Packages under that chapter. At the Commission's request, the Texas Backup Power Package Advisory Committee provides the following guidance regarding the types of facilities that may qualify under the program.

Eligibility, generally. Financial grants and loans under the Texas Backup Power Package program (TBPP) should, by statute, be awarded to "facilities on which communities rely for health, safety and well-being." Texas Utility Code § 34.0202. The program is fundamentally aimed at providing backup power for *critical* community services where otherwise it would be financially unfeasible to do so (whether due to insufficient tax base, commercial viability, or other factors).

Facilities not eligible. Also by statute, electrical loads of greater than 2.5MW are not eligible; nor are commercial energy systems (or their supporting infrastructure), private schools, or for-profit entities that do not directly serve public safety and human health.

Eligibility determination. Eligible facilities will include the types identified and listed in the Texas Administrative Code [16 TAC §25.52] as "loads for which electric service is considered crucial for the protection or maintenance of public safety":

- hospitals, police stations, fire stations, critical water and wastewater facilities, and medical facilities.

The TBPP project, however, contemplates a larger set of facilities upon which communities may rely for critical services in the event of a local or widespread sustained grid outage. These may include the following, for example, provided that they supply *critical* community services:

- facilities providing hospice, nursing, assisted living facilities, end stage renal disease and dialysis;
- community heating or cooling centers and homeless shelters;
- evacuation route fuel stations;
- gas stations and grocery stores in areas (urban and rural) that have highly limited access to essential supplies;
- communications facilities that serve 911 call centers and radio/television emergency alert systems.

In addition to these categories, TBPP eligibility may, upon consideration of relevant factors, extend to certain facilities that local officials identify as critical – *if* those facilities are designated to and in fact do provide critical services to their communities at large. Depending on the critical needs of the community, these many include food banks and gathering places like public schools, libraries, or houses of worship if they in fact provide critical community services. (The Committee does not expect or intend that an initial assessment of the scale and scope of eligible facilities will include every school, etc., in the state.)

Again, these recommendations pertain to the survey to be performed by the research entity. The Committee will make separate and further recommendations in a report at a later date, and otherwise in response to requests from the Commission, which may include recommendations on the award of grants and loans.

A handwritten signature in black ink, appearing to read "Nathan Johnson", with a stylized, flowing script.

Nathan Johnson
State Senator, District 16

**AMENDMENT 1
TO
CONTRACT NO. 473-24-00008
BETWEEN
THE PUBLIC UTILITY COMMISSION OF TEXAS
AND
PATRICK ENGINEERING, INC.**

The parties to Contract 473-24-00008, namely the Public Utility Commission of Texas (PUCT) and Patrick Engineering, Inc. (Contractor), hereby agree to amend Contract 473-24-00008 as specified herein.

Article 1. SCOPE OF AMENDMENT

All provisions of Contract 473-24-00008 remain unchanged, and Contractor shall remain subject to all provisions of Contract 473-24-00008 and its attachments and exhibits, except as specifically modified in this Amendment 1. Further, Contractor will include any provisions required by Contract 473-24-00008 in any written agreement entered into between Contractor and its approved subcontractors.

Article 2. EFFECTIVE DATE

This Amendment 1 is effective as of the date the last party signs.

Article 3. AMENDED PROVISIONS

By agreement of the parties, the following provisions of Contract No. 473-24-00008 and Exhibit A, SOW, are modified as follows:

ARTICLE 2. COMPENSATION.

2.1 Compensation. Contractor agrees to provide all Services (including labor, expenses, and any other services) described in Exhibit A, SOW, to this contract in exchange for compensation as follows:

- Total compensation for the term of this contract will not exceed \$308,100 unless amended pursuant to Article 7 of this contract.
- Compensation will be paid in U.S. dollars at the rates defined in the following table:

Task	Fee (in U.S. Dollars)
Package Design (per package, not to exceed 5 packages)	48,200
Critical Facility Report	18,600
Review of Regulatory Framework	12,200
Cost/Benefit Analysis of Package Technologies	9,550
Meetings	6,350
Technical Analysis Review, Quality Control/Assurance	20,400
Total, not to Exceed	308,100

Contractor understands that the PUCT is not responsible for payment of any costs or expenses exceeding the amounts described in Article 2.1 of this contract.

If Contractor believes that changes in the scope of Services to be performed will require Contractor to increase its fee, it must request the PUCT's written authorization to increase its

fee. Contractor must document the changes in the scope of Services and sufficiently explain why they will require additional effort. The PUCT must approve the increase in fee by written amendment to this contract before Contractor performs any Services or may invoice the increased fee.

All other provisions of Article 2 of Contract No. 473-24-00008 remain unchanged.

ARTICLE 5. SUBCONTRACTING PARTIES.

5.1 Use of Subcontractors. The Parties acknowledge and agree that Contractor intends to perform the Services required under this Contract using the following subcontractor: RINA Tech USA Inc. Contractor may not subcontract any or all of the work or obligations due under the contract without prior written approval of the PUCT. Contractor will notify the PUCT contract administrator of any other proposed subcontractor and will work with the PUCT HUB Coordinator to procure such other subcontractor and to submit appropriate subcontractor selection documentation for approval prior to engaging any other subcontractor, such approval not to be unreasonably withheld. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of this contract. Should Contractor subcontract any of the Services required in the contract, Contractor expressly understands and acknowledges that in entering into such subcontracts, the PUCT is in no manner liable to any subcontractors of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with this contract.

All other provisions of Article 5 of Contract No. 473-24-00008 remain unchanged.

ARTICLE 19. GENERAL PROVISIONS

19.8 Specific Personnel. Contractor has identified the personnel (“Team”) for this contract:

- Michael Beech, Project Manager
- Al Hymans, Lead Electrical Engineer
- Christy Hawthorn, Senior Electrical Engineer
- Lucho Arenas-Bowman, Lead Designer, Drafter
- Joseph Sroder, Designer
- David Swoch, QA/QC Engineer
- Chris Erwin, Senior Structural Engineer
- Ruben de Girardier, BESS expert

Contractor warrants that it will use its best efforts to avoid any changes to the Team throughout the term of this contract. Should personnel changes occur during the term of this contract or any extensions or renewals thereof, Contractor will recommend to the PUCT personnel with comparable experience and required qualifications and training. The PUCT must approve any change in personnel during the term of this contract in writing. At the PUCT's request, Contractor must replace an individual the PUCT finds unacceptable with an individual satisfactory to the PUCT as soon as practicable.

All other provisions of Article 19 of Contract No. 473-24-00008 remain unchanged.

ARTICLE 6. TERM AND TERMINATION.

6.5 Remedies for Breach. All remedies available to the PUCT for breach or anticipatory breach of this contract by Contractor are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies. Actual damages, cost projections, and injunctive relief may also be invoked either separately or combined with any other remedy in accordance with applicable law.

Contractor's failure to meet certain deadlines as set forth in Exhibit A, SOW, would result in damages to the PUCT that, by their nature are difficult to ascertain. However, deadlines will not be considered unmet if delays arise from circumstances outside the Contractor's reasonable control, including force majeure events, delays caused by the PUCT, or delays arising from changes to specifications or requirements made by mutual agreement between the Contractor and PUCT. Deadlines will not be considered met if the work product fails to substantially conform to the specifications set forth in the SOW or specifications agreed upon in writing between Contractor and PUCT or if the final sealed drawings are not capable of being replicated in the field as viable, functioning power packages, provided that reasonable and substantiated due care was taken in the field to replicate the final sealed drawings. Therefore, liquidated damages may be assessed, in the PUCT's sole discretion, at the following rates. The liquidated damages are not intended to be a penalty and are solely intended as compensation for damages.

1. Final report (the Contractor's Report)

If the Contractor fails to provide the final report to the PUCT administrator by January 21, 2025, the Contractor will owe \$5,000 per week to the PUCT for each week past the deadline, subject to a cap of \$50,000. However, liquidated damages will not apply if the Contractor provides written notice to the PUCT of unavoidable delays outside of Contractor's control and submits a revised delivery schedule that is mutually agreed upon in writing.

2. Final, sealed drawings

If the Contractor's final sealed drawings cannot, after the exercise of reasonable care, be replicated in the field as viable, functioning power packages, the Contractor will be given an opportunity to rectify the deficiencies within two weeks after written notification by the PUCT. If the Contractor fails to correct the deficiencies within this period, the Contractor will owe 25% of the total contract price to the PUCT.

All other provisions of Article 6 of Contract No. 473-24-00008 remain unchanged.

EXHIBIT A, SOW

1.1. Introduction: The Public Utility Commission of Texas (PUCT) issues this Request for Proposals (RFP) to engage a Research Entity (the Contractor). Subject to the PUCT's oversight and supervision, the Contractor will conduct research, analyze data, and prepare reports and recommendations to evaluate Critical Facility characteristics and requirements in this state for Texas Backup Power Packages as described in Public Utility Regulatory Act (PURA) Chapter 34, Subchapter B. Additionally, the Contractor will provide recommended detailed design and

specification for the Texas Backup Power Packages. The results of the research and recommendations may inform the PUCT and advisory committees' establishment of procedures and rules. A draft of the Contractor's final report (the Contractor's Report) is due December 16, 2024. The draft report should include the data the Contractor has compiled at that time which will inform the written narrative of the final report (the Contractor's Report), with the exception of the actual design components or engineering specifications, (i.e., research and data regarding costs and cost benefit analysis, package sizes, data on feasibility of component types (engine, PV, battery and bus), potential manufacturers, and vendors. The Texas Backup Power Report (the Contractor's Report) is due on January 21, 2025, and must include, at a minimum, the following:

1.1.1. – 1.1.5. (No change.)

2.1.4. Contractor's Report must adhere to the specifications in PURA Chapter 34, Subchapter B to align with a stand-alone, behind-the-meter, multiday backup power source that can be used for islanding. Contractor must deliver the Contractor's Initial Report on or before September 1, 2024. The initial report must include the quantification and characterization of Critical Facilities and a recommendation of the corresponding sizes of Texas Backup Power Packages which could be developed to meet the needs of those Critical Facilities. The draft report is due December 16, 2024. The final report (the Contractor's Report) is due January 21, 2025.

All other provisions of Exhibit A, SOW, remain unchanged.

Article 4. ENTIRE AGREEMENT

Contract No. 473-24-00008, the attachments referred to in Contract No. 473-24-00008, and this Amendment 1, constitute the full and entire agreement and understanding between the parties and supersede and merge all prior discussions, writings, negotiations, understandings, and agreements concerning the provision of the services of Contract No. 473-24-0008. Any terms and conditions attached to a solicitation will not be considered unless incorporated into Contract No. 473-24-0008 by specific reference.

In WITNESS WHEREOF both parties by their duly authorized representatives have executed this Amendment 1, effective as of the date of the last party's signature.

The Public Utility Commission of Texas

By:

Connie Corona

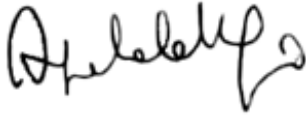
Digitally signed by Connie
Corona
Date: 2024.11.26 08:09:00 -06'00'

Connie Corona, Executive Director

Date Signed: _____

Contractor

By:

A handwritten signature in black ink, appearing to read 'Angelo Lo Nigro', written over a horizontal line.

Angelo Lo Nigro, Energy North America
Vice President

Date Signed: November 26, 2024