

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201

NOTICE OF CONTRACT AWARD

ENERWISE GLOBAL TECHNOLOGIES D/B/A CPOWER 1001 FLEET STREET, STE 400 BALTIMORE, MD 21202	DATE ISSUED: CURRENT REFERENCE NO: CONTRACT TITLE:	<u>4/8/2019</u> <u>18-177-R</u> <u>CURTAILMENT SERVICE PROVIDER/DEMAND RESPONSE SERVICES</u>
---	--	--

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

The contract documents consist of the terms and conditions of AGREEMENT No. 18-177-R including any attachments or amendments thereto.

EFFECTIVE DATE: APRIL 8, 2019

EXPIRES: FEBRUARY 1, 2021

RENEWALS: THREE (3) ONE (1) YEAR RENEWAL OPTIONS FROM FEBRUARY 2, 2021 – FEBRUARY 1, 2024

COMMODITY CODE(S): 9101600, 9062700, 9184100

LIVING WAGE: N

ATTACHMENTS:

AGREEMENT No. 18-177-R

EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: LEIGH ANNE RATLIFF

VENDOR TEL. NO.: (804) 651-8313

EMAIL ADDRESS:

LEIGH.RATLIFF@CPOWERENERGYMANAGEMENT.COM

COUNTY CONTACT: JOHN MORRILL

COUNTY TEL. NO.: (703) 228-4426

COUNTY CONTACT EMAIL:

JMORRILL@ARLINGTONVA.US

**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201**

AGREEMENT NO. 18-177-R

THIS RIDER AGREEMENT (hereinafter "Agreement") is made, on the date of its execution by the County, between Enerwise Global Technologies D/B/A CPower, 1001 Fleet Street Suite 400, Baltimore, Maryland, 21202 ("Contractor"), a Maryland corporation authorized to transact business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration and quantity(ies) specified herein or specified in a County Purchase Order referencing this Agreement, agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement and EXHIBIT A – PJM ADDENDUM FOR ENERGY EFFICIENCY, EXHIBIT B – PJM ADDENDUM FOR EMERGENCY CAPACITY DEMAND RESPONSE, and EXHIBIT C – CPOWER ACCOUNT CONFIRMATION SCHEDULE to the Commonwealth of Virginia Contract E194-77127-MA2668, incorporated herein by reference (collectively, "Contract Documents" or "Contract").

This Agreement rides a competitive procurement process conducted by the Commonwealth of Virginia. The Contractor desires to extend to the County the same pricing as the Contractor's agreement with the Commonwealth of Virginia.

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents and the remaining Contract Documents shall be complementary to each other and if there are any conflicts the most stringent terms or provisions shall prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' agreement which is not contained in the Contract Documents.

2. CONTRACT TERM

The Contractor's provision of goods for the County ("Work") shall commence on June 1, 2019 of this Agreement by the County and shall be completed no later than February 1, 2021 ("Initial Contract Term"), subject to any modifications as provided for in the Contract Documents.

Upon satisfactory performance by the Contractor, and with the concurrence of the Contractor, if the Commonwealth of Virginia renews its agreement identified in Attachment A, the County may elect to renew this Agreement under the same contract unit prices for not more than three (3) additional twelve (12) month periods ("Subsequent Contract Term"). However, if the Commonwealth of Virginia does NOT renew its agreement identified in Attachment A, this Agreement shall automatically expire on the date of the Commonwealth of Virginia 's contract expiration date.

3. CONTRACT PRICING

The Contractor will pay the County in accordance with the terms of EXHIBIT A - PJM ADDENDUM FOR ENERGY EFFICIENCY (EXHIBIT A), at the unit prices set forth in EXHIBIT A for Work provided by the Contractor, as described and required in the Contract Documents, and accepted by the County.

4. SCOPE OF WORK

The Contractor agrees to provide the goods described in the Contract Documents. The primary purpose of the Work is to provide Curtailment Service Provider/Demand Response Services.

The Contract Documents set forth the minimum work estimated by the County and the Contractor to be necessary to complete the work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of the Work.

5. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer ("Project Officer"), who shall be appointed by the Director of the Arlington County department or agency requesting the work under the Contract Documents. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work pursuant to the Contract Documents.

6. PAYMENT TERMS

Payment terms will be in accordance with the terms of EXHIBIT A. In the event that the RTO/ISO or utility assesses any penalties and/or costs against the Contractor as a result of the County's actions or inaction under this Agreement, the Contractor will be entitled to deduct those amounts from the County. In no event, however, will the Contractor seek payment for any such RTO/ISO or utility-imposed penalties and/or costs in excess of the amount earned by the County under this Agreement and the related Addenda, meaning that the County will have no "out of pocket" payments).

7. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) calendar days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract.

except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as those contained herein with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

8. NON-APPROPRIATION

All funds for payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia. In the event of non-appropriation of funds by the County Board of Arlington County, Virginia for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Contract beyond the date of termination specified in the County's written notice.

9. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if a County Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering agency. The County will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by the County Purchasing Agent. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and sole expense.

10. DELIVERY

All goods are purchased F.O.B. destination in Arlington County as designated in this Contract. All costs for handling and transportation charges to the designated point of delivery shall be borne by the Contractor. Transportation, handling and all related charges are included in the unit prices or discounts submitted by the Contractor with its bid.

11. WARRANTY

All goods and materials provided to the County shall be fully guaranteed by the Contractor against factory defects. Any defects which may occur as the result of either faulty material or workmanship by the manufacturer within the period of the manufacturer's standard warranty shall be corrected by the Contractor at no expense to Arlington County. The Contractor shall provide evidence of all manufacturers' warranties to the Project Officer at the time of delivery. All goods and materials are also guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials or workmanship for one (1) year from the date of final acceptance by the County in addition to and irrespective of any manufacturer's or supplier's warranty. No date other than the date of final acceptance shall govern the effective date of the Guaranty, unless that date is agreed upon by the County and the Contractor in advance and in a signed writing.

12. INSPECTION, ACCEPTANCE, TITLE, AND RISK OF LOSS

Inspection and acceptance of goods or materials by the County will be at the delivery location in Arlington County, Virginia, and within ten (10) calendar days of delivery, unless otherwise provided for in

the Contract. The County will not inspect, accept, or pay for any goods or materials stored or delivered off-site by the Contractor.

Title and risk of loss or damage to all goods shall be the responsibility of the Contractor until acceptance by the County. The County's right of inspection shall not be deemed to relieve the Contractor of its obligation to ensure that all articles, materials and supplies are consistent with specifications and instructions and are fit for their intended use. The County reserves the right to conduct any tests or inspections it may deem appropriate before acceptance.

No goods or materials shall be purchased by the Contractor or any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to, and that it will require all subcontractors to warrant that they have good title to, all goods or materials for which the Contractor invoices for payment.

13. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by federal or Virginia law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary or related to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that the Contractor is an Equal Opportunity Employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment, and mandates their full participation in both publicly and privately-provided services and activities.
- e. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that these provisions will apply to each subcontractor or vendor.

14. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with § 2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

15. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of marijuana or any other controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all

solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00 relating to this Contract, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by Arlington County, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

16. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

The Contract shall remain in force for the Initial Contract Term or any Subsequent Contract Term(s) and until the County determines that all the following requirements and conditions have been satisfactorily met: the County has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, the County shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by the County in its discretion.

If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period, or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by the County prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the County Project Officer within fifteen (15) days after the expiration of the Cure Period. The County may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from the County to the Contractor (unless the County in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs. Upon any termination pursuant to this section, the Contractor shall be liable to the County for all costs incurred by the County after the effective date of termination, including costs required to be expended by the County to complete the Work covered by the Contract, including costs of delay in completing the Project or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to the County upon demand by the County. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to the County, and the County shall be entitled to recover, all damages to which the County is entitled by this Contract or by law and all attorney fees and costs incurred by the County to enforce any provision of this Contract.

Except as otherwise directed by the County in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion

of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

If the Contractor believes that the County has committed a material breach of this Agreement, the Contractor will give the County written notice and the opportunity to cure the alleged breach within at least fifteen (15) days before termination of the Agreement takes effect.

17. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The performance of Work under this Contract may be terminated by the County Purchasing Agent, in whole or in part, whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination, at least sixty (60) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination and any other reasonable termination costs as negotiated by the parties.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

18. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any Virginia or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

19. COUNTY EMPLOYEES

No employee of the County shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

20. FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of

God beyond the control of the Contractor and outside the scope of the Contractor's then-current, by industry standards, disaster plan that make performance impossible or illegal, unless otherwise specified in the Contract.

The County shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the control of the County that make performance impossible or illegal, unless otherwise specified in the Contract.

21. AUTHORITY TO TRANSACT BUSINESS

The Contractor shall, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without cost or expense, at the sole option of the County.

22. RELATION TO THE COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The County will not withhold from payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor or its employees, servants or agents. Furthermore, the County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.

23. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least 5 years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

24. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the County, which will not be unreasonably withheld.

25. AMENDMENTS

Unless otherwise specified herein, this Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and the County.

26. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Notwithstanding any provision to the contrary herein, no provision of the Arlington County Purchasing Resolution or any applicable County policy is waived in whole or in part.

27. DISPUTE RESOLUTION

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, extra work or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference. A copy of the Arlington County Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court.

28. APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction, forum, and venue for any litigation with respect hereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing its work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

29. ARBITRATION

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and that any references to arbitration are expressly deleted from the Contract.

30. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the County at law or in equity.

31. NO WAIVER

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

32. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

33. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the County pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or

governmental immunity of the County. The parties intend for this provision to be read as broadly as possible.

34. SURVIVAL OF TERMS

In addition to the numbered section in this Agreement which specifically state that the term or paragraph survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO COUNTY; AUDIT; WARRANTY; AND CONFIDENTIAL INFORMATION.

35. HEADINGS

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

36. AMBIGUITIES

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

37. NOTICES

Unless otherwise provided herein, all notices and other communications required by this Contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO THE CONTRACTOR:

Attn: Legal Dept
Enerwise Global Technologies D/B/A CPower
1001 Fleet Street, Suite 400
Baltimore, MD 21202

TO THE COUNTY:

John Morrill, Energy Manager
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 705
Arlington, VA 22201

AND

Sharon Lewis, Purchasing Division Chief
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia, 22201

41. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

42. INSURANCE REQUIREMENTS

The Contractor shall provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force the coverage types and minimum amounts below prior to the start of any Work under this Contract and upon any contract extension.

Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as additional insureds on all policies, except Workers Compensation, Auto, and Professional Liability. A copy of the Additional Insured endorsement, or an "Acord" certificate with the additional insured endorsement box checked for all policies that include an additional insured endorsement, must be provided by the Contractor to the County Purchasing Agent prior to the execution of this Contract and any Contract extension. Failure to provide such documentation shall result in cancellation of the award or of the Contract.

The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Insurance Guides, and acceptable to the County.

43. COUNTERPARTS

This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

Enerwise Global Technologies D/B/A CPower

AUTHORIZED SIGNATURE: 

AUTHORIZED SIGNATURE:  2019-04-05 13:17-04:00
SVP Operations

NAME AND TITLE: ARLENE PALMER
PROCUREMENT

NAME AND TITLE:

DATE: 4/8/19

DATE:



EXHIBIT A

PJM ADDENDUM FOR ENERGY EFFICIENCY

This PJM Addendum for Energy Efficiency (EE) Program ("Addendum") is effective as of the last signature date set forth below ("Effective Date") by and between Enerwise Global Technologies, Inc. d/b/a CPower ("CPower" or "Provider") and County Board of Arlington County, VA.

This Addendum is attached hereto, and made a part hereof, the Commonwealth of Virginia Master Contract E194-77127-MA2668 dated October 20, 2017 (the "Master Agreement") between Customer and Provider. This Addendum is issued pursuant to and is governed by, the terms and conditions of the Master Agreement. All terms not otherwise defined herein shall have the meaning ascribed to them in the Master Agreement.

1. Definitions

The "EE Payment" is the contracted fixed \$/kW price multiplied by the Enrollment Value.

The "Enrollment Value" is PJM-approved permanent demand reduction associated with the Energy Efficiency Project. Enrollment Value quantity will be determined during the initial M&V submittal to PJM and specified in the applicable Program (as defined herein) evaluation documents.

An "Energy Efficiency Project" is a project that involves the installation of energy efficient devices/equipment or processes/systems, exceeding then-current building codes, appliance standards, or other relevant standards, at the time of installation.

The "Installation Period" of an Energy Efficiency Project is determined by the date of final installation of the Energy Efficiency Project. Installation Periods run from June 1 through May 31 each year.

2. Program – Energy Efficiency Permanent Load Reduction. An Energy Efficiency Project must be fully operational at all times during the Program Year (as defined herein), without any requirement of notice, dispatch, or operator intervention.

Provider agrees to facilitate and manage Customer's participation in the Energy Efficiency Program ("Program") managed by PJM Interconnection LLC ("PJM") in accordance with PJM's Open Access Transmission Tariff, as amended from time to time, subject to Customer meeting all applicable Program requirements and fulfilling its obligations as set forth herein, in the MSA, and under applicable laws (as amended, modified or supplemented from time to time, the "Rules").

3. Administration.

- **Enrollment Notifications.** Provider will notify Customer of the estimated Enrollment Value for each Energy Efficiency Project, using commercially reasonable efforts, prior to the start of the first applicable Program year via email. Enrollment is contingent upon a successful registration with PJM.
- **Measurement & Verification (M&V).** Site permanent load reduction amounts will be determined during the initial M&V submittal to PJM and specified in the applicable Program registration documents. Provider may, but is not obligated to, conduct an inspection of the facility to verify and document Customer energy reduction. Customer agrees to provide electric utility, building automation system and sub metering data, as well as any additional information required for M&V completion, if available, as requested by Provider. Customer also agrees to provide reasonable access to the facility for inspection purposes.
- **Contact List.** Customer must provide Provider with the name, email and phone numbers to be used by Provider for confirmation of enrollment eligibility, payment, and verification of Energy Efficiency Project completion.



- **Customer's Utility Accounts.** Sixty (60) days prior to the applicable Energy Efficiency Project's first eligible Program Year, Customer will provide Provider the electric utility account numbers and any required data for the utility accounts to be enrolled in the Program.

4. Term and Requirements. Customer commits each Energy Efficiency Project to the Program for a minimum of three (3) years beginning on June 1 of the initial Program year (the "Initial Term"). During the Initial Term, Provider will have the right to enroll Customer's additional Energy Efficiency Projects in the Program for each eligible Program year, including years extending beyond the Initial Term.

Energy Efficiency Projects installed in the Installation Period are eligible to participate up to four (4) consecutive Program years, as per the eligibility schedule defined by PJM. Energy Efficiency Projects are required to be operational for all participating Program years.

Customer's Enrollment Value reflects an annual commitment to the Program year and is subject to PJM approval following M&V. Customer's EE Payment may be adjusted if Customer fails to provide adequate information to Provider so that it can verify Enrollment Value with PJM.

5. Payment Terms. Provider will pay Customer \$/kW EE Payments for kW reduction in each Program Year for all eligible Program Years as provided in the table below:

EE Payment Per Program Year (\$/kW-Year) (each a "Program Year")				
Season	2019/20	2020/21	2021/22	2022/23
Summer	\$ 17.08	\$ 16.34	\$ 29.89	Determined by Auction in May 2019
Winter	\$ 4.27	\$ 0	\$ 0	\$ 0

Payment rates for future Program Years will be communicated to Customer prior to the start of the applicable Program Year.

Payment is based on capacity performance enrollment requirements of both summer and winter kw reduction values.

Customer will be paid the winter \$/kW rate for outdoor lighting projects in Program Year 2019.

Payments will be made sixty (60) days following the end of the Program Year quarter after Provider has received payment from PJM.

CPower

By:  2019-04-05
SVP Operations 13:19-04:00

Date:
Name: Shelley Schopp
Title: Senior VP, Customer Fulfillment
Address: 111 Market Place, Suite 201
City: Baltimore State: MD Zip: 21202
Phone: 1-844-CPower1, Option 2
Email: contract@cpowerenergymanagement.com
legal@cpowerenergymanagement.com

County Board of Arlington County, VA

By: 

Date: 4/8/19
Name: Arlene Palmer
Title: Procurement
Address: 2100 Clarendon Blvd, Suite 500
City: Arlington State: VA Zip: 22201
Phone: (703) 228-3554
Email: ampalmer@arlingtonva.us



EXHIBIT B

PJM ADDENDUM FOR EMERGENCY CAPACITY DEMAND RESPONSE

This PJM Addendum for Emergency Capacity Demand Response Program ("Addendum") is effective as of the last signature date set forth below ("Effective Date") by and between Enerwise Global Technologies, Inc. d/b/a CPower ("CPower" or "Provider") and County Board of Arlington County, VA.

This Addendum is attached hereto, and made a part hereof, the Commonwealth of Virginia Master Contract E194-77127-MA2668 dated October 20, 2017 (the "Master Agreement") between Customer and Provider. This Addendum is issued pursuant to and is governed by, the terms and conditions of the Master Agreement. All terms not otherwise defined herein shall have the meaning ascribed to them in the Master Agreement.

1. Definitions.

The "Program Period" is June 1 to May 31.

The "Program Quarters" are June – August, September – November, December – February, March – May.

The "Reliability Pricing Model Clearing Price" is the capacity rate of the PJM program option specified in the enrollment notification for the applicable Program Period determined via PJM's Reliability Pricing Model.

The "Capacity Payment" is calculated as each Customer accounts credited load reduction in response to events or tests, which will not exceed the committed Curtailment Value, multiplied by the applicable "Reliability Pricing Model Clearing Price", multiplied by the number of days in the Program Period.

The "Firm Service Level" or "FSL" is the meter read level the Customer's utility account load must be at or below in order to be compliant. Summer FSL: June through October and May. Winter FSL: November through April.

The "Peak Load Contribution" or "PLC" for summer is an annual utility calculation for every electric account that averages the five (5) highest weather normalized PJM system coincident load hours that occurred on different days over the period of June 1 through September 30 of the year prior to the Program Period. For winter, it is an annual calculation for every electric account that averages the highest load hour for PJM's five (5) peak winter days over the period of November 1 through April 30 between 6am-9pm from two years prior to the Program Period.

The "Curtailment Value" for each of the Customer's utility accounts is the estimated load curtailment amount during an event or test and is calculated as either the account's utility assigned summer PLC divided by its capacity loss factor minus its summer FSL or the account's utility assigned winter PLC divided by its capacity loss factor minus its winter FSL.

The "Energy Payment" is calculated for each curtailment notification as the product of (A) PJM's emergency energy price multiplied by (B) the kilowatt hours actually curtailed.

2. Program – Emergency Capacity DR. Provider agrees to facilitate and manage Customer's participation in the Emergency Capacity Demand Response Program (the "Program") managed by PJM Interconnection LLC ("Program Administrator") in accordance with PJM's Open Access Transmission Tariff, as amended from time to time, subject to Customer meeting all applicable Program requirements and fulfilling its obligations as set forth herein, in the MSA and under applicable laws (as amended, modified or supplemented from time to time, the "Program Rules"). Certain relevant Program Rules are set forth in PJM's manuals, especially manuals 11, 13 and 18, and can be found at <http://www.pjm.com/documents/manuals.aspx>. Customer hereby represents and warrants that it and its accounts can and will comply with the Program Rules.



3. Administration and Customer Responsibilities.

- **Enrollment Notifications.** Prior to the start of the Program Period, Provider will use commercially reasonable efforts, to email Customer an enrollment notification that will include the specific Program option and the dispatch notification lead time applicable to Customer's electric utility accounts. This notification will also include the proposed committed summer and winter FSL for each of Customer's utility accounts. Change requests to the FSL must be submitted via written request by Customer within 3 business days after receipt of the enrollment notification. Enrollment in the Program is contingent upon a successful registration with Program Administrator and Provider's ability to secure sufficient capacity supply obligation for the applicable Program Period.
- **Dispatch Notification and Mandatory Customer Performance.** Customer understands and agrees that the Program Administrator or Provider may call a test at any time. When events or tests are called, Provider will use commercially reasonable efforts to send Customer an email and contact Customer via phone notifying Customer of the event or test in accordance with Program notification requirements. For each Program Period, Customer's commitment is to reduce or maintain electricity consumption at or below a FSL. Customer understands that events and tests are mandatory, unless otherwise noted in the dispatch notification, in order to be deemed compliant with its commitment, and Provider expects that upon receipt of such notification, Customer will curtail its committed Curtailment Value based on the notification instructions in accordance with the Program Rules.
- **Interval Data Requirements and Total Meter Solution Option.** If the required interval level data is not available in the manner required by the Program Rules or Customer chooses to have a data acquisition ("DA") logger installed, Provider offers a Total Meter Solution ("TMS"). Title to such metering equipment will pass to Customer upon installation. TMS fees will be deducted from Customer's DR earnings. Customer agrees to a recurring \$90/month fee for any DA logger previously installed by Provider for duration of the Term.

Total Meter Solution Fee (per meter):

Installation Fee: \$1,500 1 Time

Maintenance Fee: \$90 Monthly

- **Contact List.** Customer must provide Provider with the name, email and phone numbers to be used by Provider for notification purposes upon execution of this Addendum. It is Customer's responsibility to keep this information current (i.e. dispatch, notification, accounting, etc.). Customer shall immediately notify Provider of any change to such information.
- **Customer's Utility Accounts.** Provider will provide Customer with the Account Confirmation Schedule which will confirm the Customer's utility accounts that will be enrolled in the Program. Customer will have 3 business days after receipt of the Account Confirmation Schedule to review the document and to provide Provider with any modifications. Failure to provide this information within the Provider's timeframe may prevent Provider from enrolling Customer's utility accounts in the Program.

4. **Term.** Customer commits to the Program for the period identified in the attached Account Confirmation Schedule ("Term").

5. **Payments.** For participating in the Program, Customer may receive from Provider both a Capacity Payment and an Energy Payment. The associated Curtailment Value for achieving the committed FSL is the maximum payment kw for the Program Period; the calculations for which are defined herein. Customer's payments will be adjusted for failure to provide the committed Curtailment Value for events or tests.

In addition to the payment terms set forth in the MSA, the following shall be applicable with respect to payments to Customer under this Addendum:




Provider will pay to Customer 85% of the Capacity Payment based on Customer's performance in response to event and test notifications.


Provider will pay to Customer 75% of the Energy Payment based on Customer's performance in response to event and test notifications.

Customer will receive payment sixty (60) days following the end of each Program Quarter after Provider's receipt of payment from Program Administrator.

CPower

By:  2019-04-05
Date: SVP Operations 13:19-04:00
Name: Shelley Schopp
Title: Senior VP, Customer Fulfillment
Address: 111 Market Place, Suite 201
City: Baltimore State: MD Zip: 21202
Phone: 1-844-CPower1, Option 2
Email: contract@cpowerenergymanagement.com
legal@cpowerenergymanagement.com

County Board of Arlington County, VA

By: 
Date: 4/8/19
Name: Arlene Palmer
Title: Procurement
Address: 2100 Clarendon Blvd, Suite 500
City: Arlington State: VA Zip: 22201
Phone: (703) 228-3554
Email: ampalmer@arlingtonva.us



CPower

EXHIBIT C

CPOWER ACCOUNT CONFIRMATION SCHEDULE
CUSTOMER: County Board of Arlington County, VA
PROGRAM: Emergency Capacity

UDC	UDC Account Number	Facility Name/Store #	Service Address	Start Date	End Date	Customer Share %	Est Curtailment Value Summer (kW)
DOM	3766372506		Arlington County, VA	06/01/2019	05/31/2020	85.0	3329.0

Notes:

1. Estimated Curtailment Value may be adjusted depending on operational capacity or market availability
2. Accounts with an estimated Curtailment Value equal to 0 will be enrolled as Voluntary

Contract ID: OPP - 0000023244

Account Representative: Leigh Anne Raliff

Version A1 ©2019 CPower. All rights reserved. The offering herein is sold and contracted by Enerwise d/b/a CPower. Errors and omissions excepted.

Printed: 4/2/2019
PJM Account Schedule