



SERVICE AGREEMENT NO. 5682

BACKUP POWER AND ENERGY MANAGEMENT SERVICES FOR O.N. STEVENS WATER TREATMENT PLANT

THIS **Backup Power and Energy Management Services Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Exergy Energy LLC a Delaware LLC ("Contractor"), and EE ON STEVENS LLC, a Texas single-purpose entity ("ProjectCo"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has proposed to provide Backup Power and Energy Management Services for the O.N. Stevens Water Treatment Plant ("ON Stevens WTP") in response to Request for Proposal No. 5682 ("RFP"), which RFP includes the required scope of work and all specifications and which RFP and the Contractor's proposal response, as applicable, are incorporated by reference in this Agreement as **Exhibits 1 and 2**, respectively, as if each were fully set out here in its entirety;

WHEREAS, the City requires 24/7/365 backup power designed to automatically come online to service the entire ON Stevens WTP ("Site") load in the event of a power failure;

WHEREAS, the Site has a load of 10 mw ("Site Load Limit");

WHEREAS, the City desires to participate in Electric Reliability Council of Texas (ERCOT) and American Electric Power (AEP) programs ("Ancillary Grid Services") in order to defray the capital, maintenance and electricity cost for powering the Site when the City does not require the use of the generator(s). Such programs include, but are not limited to:

1. ERCOT Emergency Response Service (ERS) is designed to be deployed by ERCOT when demand for electricity is high and is meant to help alleviate the potential for blackouts by providing ERCOT with resources to call upon in a defined emergency situation;
2. Load Resource (LR): This program is for end users that can provide ancillary services and demand response to the grid very quickly. These customers

will have an Under Frequency Relay (UFR) installed at their facility that will disconnect their load when the grid frequency gets below a set frequency threshold;

3. 4CP Reduction: Reducing facility load during peak ERCOT system time periods from June - September will save the end user between \$4.45/KW/Mo (transmission voltage) - \$6.22/KW/Mo (distribution voltage), depending on the metered voltage. 4CP reduction is customer-initiated and will reduce the 4CP kW demand on their AEP Texas distribution charges during the year following their performance;
4. AEP Load Management: This program offers a \$20-\$25/KW reduction incentive for reducing loads on AEP's ordered notification. If the ON Stevens WTP is metered on the Transmission level, this program is not available. The program is only offered to customer served by distribution voltage. This program is available during the four summer months of June through September and during the winter month of December through February. If an end user participates in this program then the ERCOT programs listed above cannot overlap on this program;
5. Power Export: Providing power to the grid when ERCOT real time prices are high can be very profitable. There may be certain requirements from the customer's retail electric provider (contract language) and AEP Texas (acceptable connection point) that must be met in order to participate. Generators that are certified to run at any time and for a long duration must be used.

WHEREAS, when choosing to participate in Ancillary Grid Services, Contractor must act in a reasonable and prudent manner to ensure the longevity of the City's capital investment in the generators that are to be purchased under this Agreement.

NOW, THEREFORE, City and Contractor agree as follows:

1. The recitals set forth above are agreed to and are binding on the parties.
2. Capitalized terms are defined in **Attachment A Definitions**.
3. **Scope.**
 - A. Contractor will provide backup power and energy management services for the ON Stevens WTP in accordance with this Agreement, **Attachment B Scope of Work**, and **Exhibit 2 Response to RFP 5682**.
 - B. The System must achieve Commercial Operation within 574 days of

the Effective Date of this Agreement. Commercial Operation means that the System is substantially mechanically complete, permitted and capable of providing electricity to the delivery point at the capacity specified in **Attachment B**.

C. Contractor shall provide City with 30%, 90% and final design plans for the System to include the License Area and the natural gas pipeline ("System Plans"). City will provide comments to Contractor within 30 days after receipt of each submittal and either approve or disapprove of the System Plans. If City disapproves the design, Contractor shall modify the design and resubmit. If the System design modifications requested by City render the System non-viable, either party may terminate this Agreement pursuant to the terms herein.

D. Contractor shall provide City with written notice that the System has achieved Commercial Operation ("Commercial Operation Date").

E. Contractor shall provide as-built drawings upon completion of the installation of the System.

F. Upon completion, Contractor shall have accomplished the following:

- i. Installed system capacity greater than or equal to the Site Load Limit at the Site;
- ii. Entire generation capacity installed at the Site can be started within 30 minutes of notice by the Director to Contractor;
- iii. Generation units paralleled with the ERCOT grid and able to accept Site Loads without disruption of plant operations;
- iv. The acceptance by the City of completion testing and commissioning;
- v. All original equipment manufacturer (OEM) safety devices installed and fully operational in accordance with the OEM standards, requirements and guidelines;
- vi. Contractor's real-time operations desk communication procedures established; and
- vii. Delivery of complete final electrical drawing of the Generator Equipment connections to the City Property prepared by a professional electrician and having the electrician's seal.

G. Contractor shall operate the System exclusively for the benefit of the City. City shall have the right to use the System for standby power and/or emergency situations at any time at no cost or penalty.

4. Term.

A. The term of this Agreement begins on the Effective Date and continues for 10 years after the Commercial Operation Date unless terminated as provided herein ("Term"). The parties may mutually extend the term of this Agreement for one additional 10-year term, provided the parties do so in writing prior to the expiration of the original term ("Option Period").

B. At the end of the Term of this Agreement or the Option Period, the Agreement may, at the request of the City prior to the expiration of the Term or Option Period, continue on a month-to-month basis for up to six months. The Contractor may opt out of this continuing term by providing notice to the City at least 30 days prior to the expiration of the Term or Option Period. During the month-to-month term, either party may terminate the Agreement upon 30 days written notice to the other party.

C. At the end of the Term and in the absence of an early termination of this Agreement, the City may elect to purchase the Generator Equipment for \$1.00.

5. Services

A. Contractor will design and engineer the System, and cause the System to be delivered, installed, constructed, commissioned and be commercially operable at the Site.

B. Contractor will monitor, operate and maintain the System at the Site in order to perform backup power and peak shaving services.

C. Contractor shall execute a service and maintenance contract with the System's OEM that establishes the repair and maintenance costs at Contractor's sole expense for a period coterminous with the Term of this Agreement. During an Option Period, Contractor will pass through the costs of repair and maintenance to City without any markup or premium by contractor.

D. In the event City is entitled to participate in applicable grid programs such as, but not limited to, emergency demand response and economic demand response, at Contractor's option, Contractor may operate the System at such times and with such outputs as required to allow City's

participation in the applicable grid program.

E. Unless City and Contractor have agreed otherwise in writing, and except as otherwise provided herein, the following services will not be provided by Contractor:

- i. Unforeseen groundwork (including excavation and circumvention of underground obstacles) encountered during installation of the System(s);
- ii. Upgrades or repair to City electrical infrastructure (including City-owned transformers, substations, poles, breakers, reclosers, and disconnects);
- iii. Snow removal, tree removal, tree trimming, mowing and any landscape improvements;
- iv. Decorative fencing and/or any visual screening materials, decorative enhancements to energy generation support structures (including painting, paint matching, masonry/stonework, and any lighting not required to meet the minimum code compliance);
- v. Removal of existing lighting, light poles, or concrete light post bases;
- vi. Roof membrane maintenance or reroofing work;
- vii. Structural upgrades to the Improvements, including ADA upgrades; and
- viii. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).

F. Contractor may suspend Services for the purpose of maintenance and repairs. Scheduled and unscheduled maintenance and repairs shall be undertaken at Contractor's sole cost and expense.

- i. Contractor must always have a minimum capacity of 8 mw available for use at the Site.
- ii. Contractor must give 20 days' written notice of planned maintenance activities to the Contract Administrator.

6. **Payments to ProjectCo or Contractor.**

A. After the Commercial Operation Date, the City will pay ProjectCo \$230,833.33 by the 1st day of each month for the initial Term of this Agreement ("Service Fee"). ProjectCo shall provide to the City proof of payment to the financing company for the Generator Equipment by the 20th day of each month.

B. ProjectCo shall submit monthly invoices on behalf of Contractor. City will make prompt monthly payments in response to the monthly invoices in compliance with the Texas Prompt Payment Act.

C. Contractor waives any rights to the monthly Service Fees due under this Agreement. Contractor expressly consents to the assignment of the monthly Service Fees to ProjectCo.

D. City will pay Contractor \$100 by the first business day of each month during the Option Period if exercised by the City.

E. **Special Terms Applicable to Service Fee.** Notwithstanding anything to the contrary contained in this Agreement, installments of the applicable Service Fee shall be due and payable on the first business day of each calendar month during each year of the Term following the Commercial Operation Date, irrespective of whether City receives an invoice therefor, other notice thereof or otherwise. The first installment of the Service Fee for the first year of the Term shall be due and payable on the first business day of the month following the Commercial Operation Date and further installments thereof shall be due and payable on a like day during each subsequent calendar month until the end of the Term. A condition precedent to the City requirement to pay the Service Fee shall be Contractor's written notice of Commercial Operation that establishes the Commercial Operation Date.

7. **Ancillary Grid Services Payment to City.**

A. City will be paid according to the Ancillary Grid Services it participates in. City shall not be penalized for not participating in Ancillary Grid Services or be subject to Service Fee payments in excess of \$2,770,000 per year for the Term or \$1,200 per year for the Option Period or any extensions thereof.

B. In consideration of the Ancillary Grid Services provided hereunder, City shall be entitled to receive 85% of the ancillary revenue remaining after the QSE deducts its portion of the revenue generated by City's participation in any ancillary grid program during the Term, and Contractor shall receive the remaining portion of the ancillary revenue. City agrees to execute those documents that may be required to allow Contractor to receive its share of ancillary revenue directly from the payor thereof.

C. During the Option Period, 100% of the ancillary revenue remaining after the QSE deducts its portion of the revenue generated by City's participation in any ancillary grid program shall be paid to City to cover

the cost of the maintenance services.

8. **Power Outage; Liquidated Damages.** Contractor acknowledges and agrees that the priority for the System and Services is to provide backup power to the Site. In the event of a power outage, Contractor shall operate the System to provide City with backup power at the O.N. Stevens Water Treatment Plant. City and Contractor recognize that the City will suffer financial loss if the System is not able to provide backup power at the Site. City and Contractor also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by City if backup power is not available in the event of a power outage. Accordingly, instead of requiring any such proof, City and Contractor agree that if Contractor fails to provide City with the amount of backup power at the Site required for compliance with the City's Emergency Preparedness Plan of 8 MW during a power outage, Contractor shall be liable to City for liquidated damages in the amount of \$5,000 per MW per hour.

Contractor will not be liable for liquidated damages if the failure to provide the required backup power is due to a City pre-approved scheduled maintenance activity that subsequently coincided with an outage; provided that the maintenance activity is not the cause of the outage. Contractor shall avoid any scheduled maintenance activity that would reduce the available capacity to less than 8 MW.

9. **Fuel.** Corpus Christi Water will obtain natural gas services for the System at the Site from Corpus Christi Gas ("Fuel") and pay all Fuel costs.
10. **Measurement.**

A. The System's electricity output during the Term and Option Period shall be definitively measured by Contractor's meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (the "Meter"). City shall have access to the metered energy output data via the monitoring system installed and maintained by Contractor as part of the System.

B. Contractor shall calibrate the Meter in accordance with manufacturer's recommendations. Notwithstanding the foregoing, City may install, or cause to be installed, its own revenue-grade meter at the same location as the Meter. If there is a discrepancy between the data from City's meter and the data from the Meter of greater than 2% over the course of a year of the Term, then City may request that Contractor calibrate the Meter at Contractor's cost.

11. **Generator Equipment and Ground License.**

A. The Generator Equipment is the personal property of ProjectCo, an affiliate of Contractor and, except as otherwise expressly provided herein in this Agreement and the License, Contractor (or its affiliate ProjectCo) shall retain control and ownership rights to the Generator Equipment. In no event shall the City have any rights in or to the Generator Equipment during the Term of this Agreement.

B. No Liens.

- i. The City agrees that at no time will the Generator Equipment become, in any manner, affixed or attached to real property or any building, and shall not be considered or deemed an improvement to or fixture of the real property or any building. The City will prevent any liens, levies, attachments or encumbrances based upon a claim or right asserted against the City from being filed or asserted against the Generator Equipment. In the event that a third party files a lien or takes any action against the Generator Equipment based upon a claim or right asserted against the City, the City agrees to do all things necessary and bear all expenses to have such lien removed or defend such action as soon as possible, subject to the appropriation of funds therefor by the City's governing body.
- ii. Contractor agrees that at no time will Contractor personal property become, in any manner, affixed or attached to real property or any building, and shall not be considered or deemed an improvement to or fixture of the real property or any building. Contractor shall prevent any liens, levies, attachments or encumbrances based upon a claim or right asserted against Contractor from being filed or asserted against City Property and shall reimburse the City for any costs incurred in defending, removing and protecting City Property from the same. In the event that a third party files a lien or takes any action against City Property based upon a claim or right asserted against Contractor, Contractor agrees to do all things necessary and bear all expenses to have such lien removed or defend such action as soon as possible. The City acknowledges and agrees that this

provision does not apply to security interests on the Generator Equipment granted to Contractor's lenders under Contractor's corporate credit agreements. Contractor represents and warrants that if the City elects to exercise its options to purchase the Generator Equipment hereunder, Contractor will cause any such security interests to be removed at the time of the City's purchase so that the City may purchase the Generator Equipment free and clear of all security interests.

- iii. Upon the request of Contractor, the City shall provide to Contractor a mutually agreeable written statement to any third party with an interest in the Site stating that (a) the Generator Equipment is the property of Contractor (or its affiliate ProjectCo) and such third party does not have any claims, rights or other interest in or to the Generator Equipment, (b) Contractor has the rights with respect to the Generator Equipment as set forth in this Agreement, including the right to remove and/or replace the Generator Equipment in accordance with the terms hereof, and (c) such other items relating to the Generator Equipment as may be reasonably requested by Contractor, the form of which is agreed to by the City.

C. Contractor shall have the right to remove or replace any of the Generator Equipment with equipment of equal or greater capacity that Contractor, in its discretion but in accordance with good industry practices, determines will perform in accordance with the specifications set forth in this Agreement, and to do so in a manner that does not reduce the System Capacity below that of Site Load Limit. In addition, Contractor shall not remove or replace any of the Generator Equipment for preventive maintenance or preventative repair purposes during Hurricane Season in a manner in which remaining System Capacity for the Services would be reduced for more than a 24-hour period below the Site Load Limit. If Contractor adds or removes any of the Generator Equipment during the Term in accordance with this section, it shall promptly provide to the City written notice to reflect the added or removed equipment. Contractor shall use reasonable industry and commercial practices required for the installation, replacement, and removal of the Generator Equipment.

D. License. Contractor will provide the Services contemplated by this Agreement through the use of an electrical micro-grid system comprised of Generator Equipment and associated installations (each a "System"). Prior

to installing any System and/or providing any Services pursuant to this Agreement at the Site, the Parties shall enter into a license, (the "License"), in form as shown **Attachment C**, granting Contractor rights to provide the Services set forth in this Agreement at the Site. The Chief Operating Officer for Corpus Christi Water is authorized to execute the License on behalf of the City.

E. Access to Site and Generator Equipment

- i. The City grants Contractor and Contractor's personnel, subcontractors and/or agents, reasonable access to and over and across the Site and the reasonable right to install, operate, maintain, monitor, remove and replace the Generator Equipment on or from the Site and License Area (as defined in the License), during the Term of this Agreement and thereafter for the purpose of removing the Generator Equipment; provided that no Contractor subcontractors or agents may enter the Site without Contractor personnel present, unless such agents or subcontractors have been previously approved by the City. Contractor's personnel, subcontractors, and/or agents must receive security clearance from the City and abide by all City safety and security rules, regulations, procedures, and personnel as such may be amended from time-to-time. The right of access shall entitle Contractor and its subcontractors and/or agents to occupy the Site at all times reasonably necessary for the purposes of installing the System, operating and maintaining the System, and removing the System in accordance with the terms hereof.
- ii. Emergency Access. In emergency situations only that affect the operations of the City, the City shall have the right to access the License Area to take remedial action to protect the City operations; accordingly, Contractor will provide City with keys, combinations, or access codes necessary to allow City personnel and or subcontractors direct access to all of the Generator Equipment, at all times during the performance period of this Agreement. Notwithstanding this section, the Director or his or her designee shall have access to an emergency shut-off switch for Generator Equipment and the System and be authorized to gain

access to the Generator Equipment and the System during times of emergency. As soon as practicable, the City shall notify Contractor of the City's entry onto the License Area and what actions were taken, if any.

- iii. Coordination of Access. Contractor shall give the Contract Administrator reasonable written notice of no less than 3 days, unless an emergency exists, of its intent to remove or replace the Generator Equipment and shall coordinate with the Director or designee so as to minimize any impact on the Site's operations and ensure its security. The Director or designee will direct Contractor as to the best route for heavy equipment, cranes, trucks, etc. and, based on the notice provided by Contractor, direct Contractor so as to prevent damage to underground equipment, pipes, and facilities.
- iv. To the extent there is a conflict between these provisions and any agreements set forth in the License, the provisions of the License shall control.

F. Restrictions on the City.

- i. Except in the event of an emergency, the City will notify the Contractor before coming onto the License Area during the Term of this Agreement. The City agrees that it shall not have access to the License Area, the Generator Equipment or the System without prior notification, and the City shall not permit any of its personnel, subcontractors or agents to (i) access the, the Generator Equipment or the System, (ii) move, modify, adjust or otherwise take any action which affects the System or the Generator Equipment or (iii) perform any alterations, additions, improvements, maintenance or repair to the Generator Equipment, at any time or under any circumstances, including painting, enclosing or surrounding the License Area with landscaping materials or plants that could adversely affect the performance of the Generator Equipment.
- ii. Prior to the City's adding any equipment to the Site that could result in the City exceeding the Site Load Limit or any other

equipment brought onto the Site creating an additional temporary load (e.g., welding equipment, construction equipment, etc.), the City shall notify Contractor in writing with sufficient time for Contractor to coordinate such activity to allow Contractor to disable the System to avoid any damage to the System.

G. Restrictions on Contractor. Contractor shall not have any access to the Site or City Property other than that explicitly granted in this Agreement and the License.

12. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement. The City's Contract Administrator for this Agreement is as follows:

Name: Diana Zertuche-Garza
Department: Corpus Christi Water
Phone: (361) 826-1627
Email: DianaZ@cctexas.com

13. **Insurance.**

A. Contractor must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor Agency to commence work until all similar insurance required of any subcontractor Agency has been obtained.

B. Contractor must furnish to the City's Risk Manager and Contract Administer one (1) copy of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies by endorsement, and a waiver of subrogation is required on all applicable policies. Endorsements must be provided with COI. Project name and or number must be listed in Description Box of COI.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
-------------------	----------------------------

Commercial General Liability Including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$500,000 Combined Single Limit
WORKERS' COMPENSATION	Statutory
EMPLOYER'S LIABILITY	\$500,000 /\$500,000 /\$500,000
PROFESSIONAL LIABILITY (Errors and Omissions)	\$1,000,000 Per Claim (Defense costs not included in face value of the policy) If claims made policy, retro date must be prior to inception of agreement, have extended reporting period provisions and identify any limitations regarding who is insured.

C. In the event of accidents of any kind related to this agreement, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Contractor will be promptly met.

B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.

C. Contractor shall be required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to

City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

D. Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- List the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations, completed operation and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
- Provide 30 calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than 10 calendar days advance written notice for nonpayment of premium.

E. Within 5 calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to remove the exhibit hereunder, and/or withhold any payment(s) if any, which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this agreement.

H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.

I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

14. *Warranty.*

A. Contractor warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Nueces County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

B. The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.

C. In addition, the products purchased under this Agreement shall be warranted by the Contractor or by the manufacturer for the Term and Option Period of this Agreement.

15. *Non-Appropriation.* The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriation and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget. The Director will include this item in the budget request for each fiscal year that payments become due under this Agreement. The obligations of the City under this Agreement constitute a current expense of the City for each fiscal year of the City and shall not constitute an indebtedness of the City within the meaning of the Constitution and Laws of the State of Texas. Nothing herein shall constitute a pledge by the City of any taxes or other moneys (other than moneys

lawfully appropriated from time to time by or for the benefit of the City for this Agreement and the net proceeds of any applicable insurance) to the payment of any amount coming due hereunder. The City agrees to promptly notify Contractor if funds are not appropriated.

16. **Independent Contractor.** Contractor will perform the work required by this Agreement as an independent contractor and will furnish such Services in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.
17. **Subcontractors.** Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the Contract Administrator unless the subcontractors were named in the proposal or in an Attachment to this Agreement, as applicable. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the work. The City may, at the City's sole discretion, choose not to accept Services performed by a subcontractor that was not approved in accordance with this paragraph.
18. **Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.
19. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
20. **Taxes.**
 - A. The City represents that the City is a municipality and exempt from Federal Excise and Transportation Tax, Texas Limited Sales and Use Tax and property taxes, and therefore, so long as and to the extent that the City is exempt from taxes, the City shall not have any liability to Contractor for any taxes hereunder and Contractor will not include taxes in its invoices. The Contract Administrator will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.
 - B. The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within

15 days of such request.

21. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Diana Zertuche-Garza
Title: Contracts/Funds Administrator
Address: 2726 Holly Road, Corpus Christi, Texas 78415
Phone: (361) 826-1627
Fax: (361) 826-4495
DianaG@corpuschristitx.gov

IF TO CONTRACTOR:

Contractor: EXERGY ENERGY LLC
Attn: David March
Title: Chief Executive Officer
Address: 2718 Dana Street, Suite 6, Berkeley, CA 94705
Phone: (704) 778-1909
Fax: (866) 642-7924
Email: march@exergyenergy.com

IF TO PROJECTCO:

Contractor: EE ON STEVENS LLC
Attn: David March
Title: Chief Executive Officer
Address: 2718 Dana Street, Suite 6, Berkeley, CA 94705
Phone: (704) 778-1909
Fax: (866) 642-7924
Email: march@exergyenergy.com

22. **CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL REASONABLE EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS**

AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT BY THE CONTRACTOR OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL REASONABLY SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

23. Termination.

A. Termination upon Event of Default.

- i.** Except as otherwise set forth herein, either Party has the right to terminate this Agreement by written notice upon an Event of Default by the other Party; provided, however, such Party shall have an opportunity to cure as provided herein. With respect to either Party, an "Event of Default" by such Party shall mean:
 - (1)** If a Party (for the purposes of this Article, a "Party" shall include any affiliate of Contractor that Contractor may use or create to own the Generator Equipment) becomes insolvent by reason of its inability to pay its debts as they mature; is adjudicated bankrupt or insolvent; files a petition in bankruptcy, reorganization or similar proceeding under the bankruptcy laws of the United States or shall have such a petition filed against it which is not discharged within 30 days; has a receiver or other custodian, permanent or temporary, appointed for its business, assets or property; makes a general assignment for the benefit of creditors; has its bank accounts, property or accounts attached; has execution levied against its business or property; or voluntarily dissolves or liquidates or has a petition filed for corporate dissolution and such petition is not dismissed within 30 days; or
 - (2)** If a Party fails to materially comply with any provision of

this Agreement or any material breach of any representation or warranty of this Agreement and such Party does not correct or cure such failure or breach within 30 days after written notice of such failure to comply is delivered by the non-breaching Party specifying the nature of the breach in reasonable detail.

- ii. Notice of Default. If an Event of Default occurs and a Party wishes to terminate the Agreement, then the Party must deliver a written notice to the Authorized Representative describing the default and the proposed termination date. The date must be at least 30 days after the Authorized Representative receives the notice. To the extent that the breach is of a type that requires more than 30 days to cure, that Party shall have an additional period of time as is necessary to affect the cure, so long as it diligently works to cure such default. The Party sending notice, at its sole option, may extend the proposed termination date to a later date. If the Party receiving notice cures the default before the proposed termination date, then the proposed termination is ineffective. If the Party receiving notice does not cure the default before the proposed termination date, then the Party sending notice may terminate its performance under this Agreement on the termination date.

B. Termination for Convenience

Notwithstanding any other provision in this Agreement, the City Manager or designee may terminate this Agreement for convenience upon 30 days advance written notice to Contractor.

C. Effects of Termination and Breach.

- i. Obligations After Termination. Upon termination of this Agreement, for reasons other than convenience, neither Party shall have any further obligations under this Agreement except for (1) payments accruing prior to the termination of this Agreement, the requirement to repair damage to the Site or improvements thereon, and any Site restoration and equipment removal requirements, and (2) obligations, promises, or covenants set forth herein that are expressly made to extend

beyond the Term or by their nature extend beyond the termination. In the event of termination for convenience, City shall be responsible to pay ProjectCo the Equipment Retention Fee as defined in Schedule 1 applicable to the date of such termination for convenience.

- ii. Right to Purchase Generator Equipment. In the event of a termination of this Agreement, the Director may elect on behalf of the City to buy the Generator Equipment (on-site at the time of the termination of the Agreement) upon the appropriation of funds therefor by the City Council and payment of the Equipment Retention Fee. The payment of the Equipment Retention Fee for the Generator Equipment shall be made within 60 days of the Director's election. In the event that the Director does not make an election at the time of termination of this Agreement, the City shall be deemed to have waived its right to purchase the Generator Equipment and no Fee shall be due, in which case, Contractor must remove the Generator Equipment from the Site within 120 days.

Within 3 days of accepting payment of the Equipment Retention Fee, ProjectCo shall assign or cause to be assigned all warranties, service contracts, insurance, title and all other rights associated with the Generator Equipment to the extent such warranties, service contracts, insurance or other rights associated therewith are freely assignable and at no additional cost to ProjectCo or City.

- iii. Consequential, Other Damages and Attorney Fees and Costs. Both Parties waive their right to consequential damages, exemplary damages, and damages related to unabsorbed overhead, as well as reasonable and necessary costs and attorney's fees except for the liquidated damages defined herein.

24. **Force Majeure.** Contractor is excused from performing its obligations under the Agreement if the performance is prevented by a Force Majeure Event, but only for the duration of the event. Contractor must use commercially

reasonable efforts to mitigate the impact of the Force Majeure Event and resume performance as soon as possible.

Force Majeure Events include:

- A. Explosion
- B. Unavailability of fuel and/or natural gas

25. **Owner's Manual and Preventative Maintenance.** Contractor agrees to provide a copy of the owner's manual and/or preventative maintenance guidelines or instructions if available for any equipment purchased by the City pursuant to this Agreement. Contractor must provide such documentation upon conveyance of the equipment to the City.
26. **Right to Audit Records.** The City may audit Contractor's records to determine its compliance with the terms of this Agreement. Contractor, during normal business hours shall allow City reasonable access to its records and books and all other relevant records related to the Services provided under this Agreement.
27. **Assignment to Financing Parties.** For the first 10 year term of this Agreement, the Parties acknowledge that ProjectCo may obtain financing from lenders or other persons or entities (each a "Financing Party") in connection with the installation, construction, ownership, operation, maintenance of or other matters relating to the System and this Agreement during the initial Term of this Agreement.

ProjectCo may, without the prior written consent of but with notice to City, assign, mortgage, pledge, grant a ~~lien or~~ security interest in or otherwise assign all or a portion of its rights, title, and interests in this Agreement (including any fees and other amounts at any time due hereunder) and/or the Systems, to any Financing Party; provided, that, ProjectCo is not released from liability hereunder as a result of any assignment unless the assignee assumes ProjectCo's obligations hereunder by binding written instrument.

In furtherance of ProjectCo's financing arrangements and in addition to any other rights or entitlements of ProjectCo under this Agreement, City may timely execute and deliver to ProjectCo, any consents to and acknowledgments of assignment or financing; provided, that such estoppels, consents and acknowledgments to assignment do not alter the fundamental economic terms of this Agreement. In the event of any such assignment, the right of such Financing Party to receive amounts payable under this Agreement shall not be subject to any defense, set-off, counterclaim or recoupment which City may have against ProjectCo.

General Assignment. No assignment of this Agreement by Contractor or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment.

No assignment of this Agreement by ProjectCo to a non-financing party, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by ProjectCo is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

28. **Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
29. **Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
 - A. this Agreement (excluding attachments and exhibits);
 - B. its attachments;
 - C. the RFP document including any addenda (Exhibit 1); then,
 - D. the Contractor's proposal response (Exhibit 2).
30. **Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
31. **Governing Law.** Contractor agrees to comply with all federal, Texas, and City laws in the performance of this Agreement. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
32. **Public Information Act Requirements.** This paragraph applies only to agreements that have a stated expenditure of at least \$1,000,000 or that result in the expenditure of at least \$1,000,000 by the City. 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.

33. **Aggregate Data Collection and Usage.** The City acknowledges and agrees that Contractor may: (i) collect, process and aggregate any data used with, stored in, or related to the Services, including, without limitation, end-user energy usage and demand data, and create aggregate data records ("Aggregate Data") by removing any personally identifiable information ("PII") from the underlying data; (ii) use such Aggregate Data to improve the Services, develop new solutions, understand actual energy usage and demand trends and general industry trends, develop white papers, reports, or databases summarizing the foregoing, and generally for any legitimate purpose related to Contractor's business; and (iii) share Aggregate Data with third parties or publish any reports, white papers, or other summaries based on Aggregate Data.

34. **Confidentiality.**

A. **Nondisclosure to Third Parties.** In performing its obligations under the Agreement, each Party may receive non-public information of the other Party ("Confidential Information"). Each Party, on behalf of itself and its employees, contractors and agents (collectively, "Representatives"), agrees not to, except as set forth in Section 3(b) and (c) or as required by applicable law or regulation, use or disclose Confidential Information during or after the Agreement without the prior written consent of the other Party. To protect Confidential Information, each Party agrees to: (i) limit dissemination of Confidential Information to only those Representatives having a "need to know"; (ii) advise each Representative who receives Confidential Information of the confidential nature of such information; and (iii) have appropriate agreements, policies and/or procedures in place with such Representatives sufficient to enable compliance with the confidentiality obligations contained herein. Notwithstanding the foregoing, Contractor may share Confidential Information with affiliates to the extent permitted by applicable law and the Contractor energy procurement advisory process guidelines, as applicable, and as amended from time to time. Each Party is responsible for any breach by its Representatives.

B. **Use of Confidential Information.** The City acknowledges that Contractor may receive Confidential Information of the City from the applicable independent system/grid operator, utility and/or supplier, through data collected through the Solutions or otherwise, which may be used or disclosed by Contractor as necessary for the performance of the Agreement.

C. Texas Public Information Act. The Parties acknowledge that the City is a Texas governmental entity subject to the Texas Public Information Act (the "Act"). Should the City receive a request for disclosure of Confidential Information pursuant to the Act, City will promptly provide Contractor with notice of such request so that Contractor may avail itself of any opportunities to establish reasons why the information should be withheld prior to disclosing such information. The burden of establishing the applicability of exceptions to the disclosure of Confidential Information under the Act resides with Contractor. Should Contractor be unable to establish a valid exception from disclosure or exclusion from the Act, then City may release the information, solely to the extent necessary to comply with the Act.

35. **Entire Agreement.** This Agreement, and when executed, the License and the Site Addendum, merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties with respect to the subject matter hereof. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.
36. Contractor verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement; does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement; and does not boycott energy companies and will not boycott energy companies during the term of this Agreement.
37. **No Waiver of Sovereign Immunity.** This Agreement is to perform a governmental function solely for the public benefit. By entering into and performing its obligations under this Agreement, the City has not waived its sovereign immunity.

Exergy Engergy LLC

David H Kurzman

David H Kurzman (Dec 1, 2025 14:39:47 PST)

David Kurzman
Chief Financial Officer

PROJECTCO

David H Kurzman

David H Kurzman (Dec 1, 2025 14:39:47 PST)

David Kurzman
Managing Member

CITY OF CORPUS CHRISTI

Rachel Erben
Assistant Director, Contracts & Procurement

Approved as to Form:

Assistant City Attorney

Attached and Incorporated by Reference:

Attachment A: Definitions
Attachment B: Scope of Work
Attachment C: License
Schedule 1 – Equipment Retention Fee

Incorporated by Reference Only:

Exhibit 1: RFP No. 5682
Exhibit 2: Contractor's Proposal Response

Purchasing Manager

Date

Attachment A - Definitions

1. Agreement – Backup Power and Energy Management Services Agreement for the O.N. Stevens Water Treatment Plant
2. AEP - American Electric Power
3. Ancillary Grid Services – energy programs offered by ERCOT and/or AEP
4. City – City of Corpus Christi
5. Commercial Operation - the System is substantially mechanically complete, permitted and capable of providing electricity to the Site at a minimum starting capacity of 10 megawatts
6. Commercial Operation Date – the date Contractor provides notice of Commercial Operation
7. Contractor –Exergy Energy LLC
8. Generator Equipment – Eight Cummins C1300N6B spark ignited engine generator sets, one Cummins switchgear, one digital master controller (DMC)
9. City Manager – City Manager or designee
10. Director – Director of Corpus Christi Water or designee
11. DR – Demand Response
12. Effective Date – date the Agreement is signed by the City Manager or designee
13. Equipment Retention Fee – the amount remaining on the purchase price of Generator Equipment that may be paid by the City in the event of termination of this Agreement
14. ERCOT - Electric Reliability Council of Texas
15. ERS – Emergency Response Service program meant to help alleviate potential blackouts by providing ERCOT with resources to call upon in a defined emergency situation

16. Fuel – natural gas provided by Corpus Christi Gas
17. License Area – as defined in the License Agreement (see Attachment C)
18. Meter - revenue grade meter that meets ANSI-C12.20 standards for accuracy
19. OEM – Original Equipment Manufacturer
20. Option Period – Second 10-Year term of Agreement
21. QSE or Qualified Scheduling Entity – QSE is a market participant that is qualified by ERCOT to submit bids or offers to buy/sell electricity, to serve as a communication conduit between ERCOT and resource or load serving entities, and is responsible for settling financially with ERCOT. The Site currently uses Enel X as its QSE.
22. ProjectCo – EE ON STEVENS LLC
23. Real-time Operations Desk – Exergy Energy's web-based customer portal
24. RFP – Request for Proposal No. 5682
25. Service Fee – Payment by City to Contractor during the Term and Option Period of the Agreement. The Service Fee during the Term is \$230,833.33 each month. The Service Fee during the Option Period is \$100.00 each month.
26. Site or City Property – O.N. Stevens Water Treatment Plant (ONSWTP). 13101 Leopard Street, Corpus Christi, Texas 78410.
27. Site Load Limit – 10 MW
28. System – electrical microgrid system comprised of Generator Equipment and associated installations
29. System Plans - engineering drawings and plans showing the proposed location of the System, the location of all utility conduits and utility connections required in connection with the System, the location of the City's existing on-site generation and electrical connections, the location of any temporary workspace

required in connection with the installation of the System, and any such other matters required by the City.

30. Term -The term of this Agreement begins on the Effective Date and continues for 10 years after the Commercial Operation Date unless terminated as provided herein.

Attachment B - Scope of Work

Attachment B – Scope of Work

1.1 General Requirements

- A. The Contractor shall own, finance, install, manage, service, and maintain backup generation equipment, at a minimum starting capacity of 10 Megawatts and expandable to 12 Megawatts, that meets the compliance standards for participation in Demand Response (DR) Programs and other ancillary services programs offered by the grid. The system will be located at the O.N. Stevens Water Treatment Plant (ONSWTP), 13101 Leopard St. in Corpus Christi, Texas, 78410.
- B. Equipment and service contract term of 10 years with one 10-year option period, whereas generators and associated equipment are to be paid in full during the initial 10-year term, in turn becoming permanent property of the City.
- C. The engine generator must be rated by the manufacturer for continuous operation at the full rating to achieve the needed capacity, including potential startups of heavy load equipment while on generator power.
- D. Preference for engine and generator manufactured by the generator set original equipment manufacturer (OEM).
- E. The system shall be designed to automatically come online, without the need for manual actions by plant staff or anyone else, and service the entire plant load in the event of a power failure.
- F. All planned power transfers must be closed transitions, resulting in no power disruption to the plant.
- G. City approval required for manufacturer of power transfer switchgear, transfer switch, controls, and associated appurtenances during the Engineering phase.
- H. The Contractor must be able to respond to requests for conversion to generator power 24x7 without exception.
- I. The system must be operable during inclement weather, including at a minimum, category 3 hurricane events (111 to 129 mph winds). Any enclosures required on the genset shall be rated for at least category 3 storms.
- J. The system shall have redundant controls to eliminate single points of failure. In the event of a control failure, the system shall still be able to be started and operated manually.

- K. The system must be operated and monitored remotely by a 24/7/365 automated operations platform.
- L. The Customer shall have access to all accounts, generator, invoicing, technical, fuel, and maintenance records through a customer web portal.
- M. The Contractor shall be responsible for turnkey solutions for the DR program, will manage the program from the beginning to the end, including equipment installation for generator upgrades and permitting, and enrollment in the DR program.
- N. The Contractor will own the system and be responsible for the operation, maintenance, servicing, refurbishment, and replacement of obsolete parts. The City will not be required to perform or provide any maintenance or support.
- O. All potential costs must be clearly outlined in the proposal and contract. Operating costs may be adjusted based on agreed-upon indices at agreed-upon intervals.
- P. The Contractor must be structured according to IRS regulations such that it is an off-balance services expense.
- Q. The Contractor shall be responsible for the design, permitting, and installation of the system at the City's specified location.
- R. Ownership of the system shall transfer to the City at the end of the term of the agreement. The Contractor shall continue to operate and maintain the system throughout the entire term of the contract, including option period(s).
- S. Service and maintenance shall be supplied in accordance with the manufacturer's specifications.
- T. A service parts inventory must be maintained for the entire power system at a central location which is accessible to the service location 24 hours per day, 365 days per year. The commercial value of inventory shall be included in the proposal. Inventory should cover all major components of the power system, including engines, alternators, control systems, paralleling electronics, and power transfer equipment.
- U. The Contractor's selected manufacturer service team must be trained and factory certified in generator set service. Service vehicles shall be stocked with critical replacement parts. The service organization shall be on call 24 hours per day, 365 days per year. Preference for a service organization physically located within 100 miles of the site.
- V. The manufacturer shall maintain model and serial number records of each

generator set provided for at least 20 years.

- W. The Contractor will provide, at a minimum, a primary and secondary contact person who shall be available 24/7 to coordinate system issues.
- X. The Contractor will be responsible for carrying any/all insurance required to protect the system from damage/weather events/accidents that may occur during the life of the contract.
- Y. The Contract will establish a level of service to be provided for operating and maintaining the system. Failure to meet the level of service could result in an agreed-upon financial penalty against the Contractor.
- Z. The Contractor shall set up, manage, and maintain a web-based energy manager account for the City to include all municipal facilities served under the same contract.
- AA. The Contractor shall be responsible for integrating and maintaining automated data exchange between utility providers and the web-based energy manager.
- BB. Preference for Contractor to set up and manage a fuel and electricity procurement platform that permits the City to execute energy procurement auctions and manage energy contracts online, as well as providing the opportunity of leveraging the backup power in place to sell energy into the market when opportunities present themselves.
- CC. The Provider shall have the capability to monitor City weather conditions and preemptively start the generators if conditions are such that an outage is highly probable.
- DD. At the end of the agreement, the Contractor shall offer a program that provides maintenance and controller upgrades to keep the generator system operational, considering that controller electronics have an earlier end-of-life expectancy than the engine.
- EE. The City reserves the right to utilize the generator system for standby power or emergency situations outside of ERCOT events as deemed necessary by plant operations at no cost or penalty to the City.
- FF. The Contractor shall monitor the customer's energy usage and market conditions and forecast and advise the customer of potential increased price risk or outage exposure.
- GG. The City is currently under contract with Enel X through September 30, 2026, to provide DR services. Should the Contractor opt not to continue with the

contract, the Contractor will be responsible for paying all associated early termination fees.

1.2 Scope of Work

- A. The Contractor shall design, purchase, and install backup generation equipment at a minimum starting capacity of 10 Megawatts, expandable to 12 Megawatts.
- B. The Contractor shall remove and discard of three each currently installed 2001 model Cummins diesel generators. Title can be transferred to the Contractor for disposal method of their choice including refurbishment/selling.
- C. The Contractor shall remove and relocate one each currently installed 2019 model Cummins diesel generators to the location at Plant Management at the time of removal.
- D. The Contractor shall develop a Project Management Plan and incorporate the Texas Demand Response Program Guidelines for participation for eligible generators at the ONSWTP.
 - a. The Contractor shall provide a schedule (or project timeline) including activities showing durations for engineering, permitting, procurement, fabrication, construction (civil, mechanical, electrical), testing, commissioning and turnover. The schedule should be time-scaled, showing start and completion dates. The schedule shall include all contractors' off-site manufacturing and fabrication, work site activities, and their interdependences.
 - The Contractor must schedule generator installation so as to maintain a minimum of 6 Megawatts of backup generator power at all times during construction.
 - b. The Contractor shall apply for and assume costs for all required permitting, including federal, state, and local entities.
 - c. The Contractor shall assume liability for non-compliance with United States Environmental Protection Agency (USEPA) and Texas Commission on Environmental Quality (TCEQ), on behalf of the City.
- E. The Contractor shall develop and be responsible for compliance services including the National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (RICE NESHPAP) non-emergency use requirements and monitoring plan for ONSWTP generators.
- F. The Contractor shall develop a monitoring and control system to operate the equipment in compliance with all local, state and government requirements for non-emergency operations.

- G. The Contractor shall provide necessary testing and compliance reporting to ensure the generators are working properly.
- H. The Contractor shall submit all compliance reports to the appropriate air agency or EPA.
- I. The Contractor shall monitor regulatory changes and policy changes affecting DR payments and provide ongoing recommendations.
- J. The Contractor shall provide a communication plan, technical support, and a real-time data plan.
- K. The Contractor shall develop a Communication Plan in order to respond to DR events.
- L. The Contractor shall provide a bi-weekly schedule and a one-month outlook on project management and include safety items, weather delays, etc.
- M. The Contractor shall provide 24/7/365 technical support.
- N. The Contractor shall provide alerts for situations such as grid issues and support to help meet curtailment targets.
- O. The Contractor shall provide all operations and maintenance (O&M) manuals for all provided equipment and materials.
- P. The Contractor shall comply with City's safety and quality requirements and provide the City with copies of their safety and quality programs as part of the proposal.
- Q. The Contractor shall provide site requirements needed to perform work such as laydown requirements, work hours, access to ONSWTP, etc.
- R. The Contractor shall be responsible for providing construction power, lighting, office/trailer, potable water, sanitary stations, waste/disposal services. Power and potable water will be available for the contractor office trailer; however, Contractor is responsible for making all connections.

1.3 Work Site and Conditions

The Contractor shall establish and maintain a complete Quality Control Program that is acceptable to the Contract Administrator to ensure that the requirements of the Contract are provided as specified. The Contractor will also provide supervision of the work to ensure it complies with the contract requirements.

Attachment C - Revocable License for Use of Premises

STATE OF TEXAS **§**
COUNTY OF NUECES **§**
§

This premises license ("License") is entered into by and between the City of Corpus Christi ("City"), a Texas home-rule municipal corporation, and Exergy Energy LLC ("Licensee").

In accordance with Article IX, Section 1, of the City's City Charter, the City by these presents does grant and convey to Licensee, for the term and upon the conditions stated in this License, a License for Use of Premises to allow the Licensee to locate and operate backup generation equipment ("System Facilities") at O.N. Stevens Water Treatment Plant ("Site") in full compliance and at all times subject to the Licensee' compliance with the conditions specified in this License.

The area in which the License is granted for the location of the System Facilities is depicted on **Exhibit "A"** (Location Map) and referred to in this License as the "License Area." The plans for the equipment including equipment dimensions are shown on **Exhibit "B"** (Plan View).

The City and Licensee agree as follows:

- A. This License, and the rights granted under the License, may be revoked at any time by the City upon providing the Licensee not less than 30 calendar days' notice in writing by the City Manager or designee ("City Manager").
- B. This License grants Licensee use of _____ square feet tract of land at the Site located at 13101 Leopard Street, Corpus Christi, Texas 78410.
- C. This License becomes effective upon the signature of the City Manager or designee and shall be for a term coterminous with the Backup Power and Energy Management Services Contract not to exceed 20 years..
- C. In consideration of the License herein granted, Licensee agrees to pay the City \$1.00 for this License.
- D. Upon termination or expiration of this License, the Licensee shall remove all personal property from the License Area. If Licensee fails to remove its personal property by the expiration date of this License, property shall be forfeited and become the property of the City.
- E. Upon termination or expiration of this License, the Licensee shall repair the License Area to its original condition. In the event Licensee fails to return the premises to its original condition, Licensee agrees that City may perform the repairs and invoice Licensee for the cost. Licensee shall pay all invoices within 30 days of receipt.
- F. This License may not be assigned by Licensee without the City Manager's written consent.
- G. The Licensee shall acquire and maintain at all times for the term of this License insurance coverage as shown in **Exhibit C** pertaining to the License Area granted under this License

and the activities authorized by this License. The types of required insurance coverage's must be in the minimum amounts set forth in the attached **Exhibit C**, and the substantive content of **Exhibit C** being incorporated by reference into this License as if fully set out here in its entirety. The insurance policies must include the City as an additional insured and may not be canceled, renewed or materially changed by Licensee unless at least 10 days advance written notice has been provided to the City. Licensee shall provide copies of all insurance policies to the City's City Attorney.

- H. Should construction, installation, repair or replacement of the System Facilities be deemed necessary by Licensee in the License Area, then schedules, plans and specifications for all proposed work shall be submitted in advance by the Licensee to Corpus Christi Water for approval prior to installing any equipment. The plans must show the type of equipment, installation schedule, the location of installation, and planned maintenance or adjustments. The Licensee shall also comply with any other laws, rules, regulations, and ordinances that may be applicable, including obtaining all required permits.
- I. Prior to the start of any approved installation, Licensee shall require every contractor and subcontractor to provide a Certificate of Insurance reflecting insurance in coverage amounts as set forth in **Exhibit C**. Additionally, Licensee shall require their contractors and subcontractors to indemnify the City, its officers, officials, employees, representatives, agents, and invitees in the same manner that Licensee has provided indemnification to the City pursuant to this License.
- J. Licensee shall provide all necessary and proper safety devices to prevent injuries or accidents on the City's property.
- K. Any installation, operation and use of the License Area by Licensee shall not interfere with the operation of the City or any of its agents, contractors, or franchisees of any existing or future proposed uses.
- L. If, as determined by the City Manager, damage occurs to the License Area or to the public infrastructure or services due to the Licensee or its contractor's or agent's use of the License Area, then Licensee shall allow the City immediate access to the License Area to perform an assessment, make repairs or take any other action deemed necessary by the City. Determination of the extent of damage and repairs necessary to restore the premises or services shall be made by the City. All costs of the City associated with said damage and repair, including labor and materials, shall be paid by Licensee within 30 days of the City's invoice.
- M. Use of the License Area authorized by this License is strictly limited to backup power and energy management services for the Site. Licensee shall keep and maintain the System Facilities on the premises in commercially reasonable condition during the term of this License. Licensee shall have 24-hour access to the premises at all times during the terms of this License.
- N. **INDEMNIFICATION.** *By its acceptance of this license, the Licensee covenants and agrees fully to indemnify and hold harmless the City and the elected officials and officers and employees of the City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and*

nature, including but not limited to, personal injury or death and property damage, made upon the City, directly or indirectly arising out of, resulting from or related to Licensee's activities under this license, including any acts or omissions of Licensee, and any respective agent, officer, director, representative, employee, consultant, or sub-licensee of Licensee, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this license, all without, however, waiving any governmental immunity available to the City under Texas law and without waiving any defense of the parties under Texas law. The provisions of this indemnification are solely for the benefit of the parties to this license and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Licensee shall promptly advise the City in writing of any claim or demand against the City or Licensee known to the Licensee related to or arising out of Licensee's activities under this license and shall see to the investigation and defense of the claim or demand at Licensee's cost. The City shall have the right, at its option and at its own expense, to participate in the defense without relieving Licensee of any of its obligations under this paragraph. The City shall cooperate with Licensee in the defense of all claims, proceedings, actions, and suits subject to this indemnification. This indemnification shall not extend to any costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, or suit to the extent they directly or indirectly arise out of, result from or relate to the negligent or wrongful acts or omissions of City or its officers, agents, employees, representatives, consultants, or contractors. This indemnification survives the termination or expiration of this license.

- P. All signatories signing this License warrant and guarantee that they have the authority to act on behalf of the entity represented and make this License binding and enforceable by their signatures.
- Q. Unless otherwise stated in this License, any notice required or permitted to be given under this License must be in writing and sent by certified mail, return receipt requested to the following addresses:

If to Licensee: Exergy Energy LLC

Attn: David March
Title: Chief Executive Officer
Address: 2718 Dana Street, Suite 6, Berkeley, CA 94705
Phone: (704) 778-1909
Fax: (866) 642-7924
Email: march@exergyenergy.com

If to the City: City of Corpus Christi
Attn: Corpus Christi Water
P. O. Box 9277
Corpus Christi, TX 78469-9277

Any party shall, by notice to the others in accordance with the provisions of this paragraph,

specify a different address or addressee for notice purposes within 10 days of any address change.

- R. This License shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created pursuant to this License are performable in Nueces County, Texas. Venue for all actions arising from, out of, or related to this License must be brought in Nueces County, Texas.
- S. The Licensee further agrees, in compliance with the City of Corpus Christi Ordinance No. 17112, to complete, as part of this License, the completed "Disclosure of Interests" form is attached and incorporated by reference into this License as **Exhibit D** as if set out here in their entireties.
- T. City reserves the right to require Licensee to relocate the System Facilities at Licensee's sole cost upon reasonable written notice when such relocation is deemed necessary by the City Manager or designee.
- V. This instrument, including exhibits, constitutes the entire License between the City and the Licensee, and no prior written, oral, or contemporaneous promises, warranties, or representations shall be binding upon any parties. This License may only be amended by written instrument signed by authorized representatives of the City and Licensee.

EXECUTED this _____ day of _____, 2025.

Exergy Energy LLC

ACKNOWLEDGMENT

STATE OF TEXAS

§ 200

COUNTY OF NUECES

This instrument was signed before me on _____, 2025, by _____
_____, on behalf of said Limited Liability Company.

Notary Public's Signature

ATTEST:

CITY OF CORPUS CHRISTI

City Secretary

By: _____
Nick Winkelmann
Interim Chief Operating Officer
Corpus Christi Water

Approved as to legal form: _____, 2025

Assistant City Attorney for the City Attorney

STATE OF TEXAS

§ 303

COUNTY OF NUECES

This instrument was acknowledged before me by means of an interactive two-way audio and video communication on _____, 2025, by Nick Winkelmann, P.E., as the Interim Chief Operating Officer for Corpus Christi Water of the City of Corpus Christi, a Texas municipal corporation, on behalf of said corporation. This notarial act was an online notarization of an electronic signature.

Notary Public's Signature

EXHIBIT A - LOCATION FOR EQUIPMENT INSTALLATION

EXHIBIT B
PLAN VIEW SHOWING EQUIPMENT DIMENSIONS

EXHIBIT C

Insurance Requirements

1.1 Licensee must not commence performance under the License until all required insurance has been obtained and such insurance has been approved by the City.

1.2 Licensee must furnish to the Director of Engineering Services with the signed agreement a copy of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. **The City must be listed as an additional insured on the General Liability policy, and a waiver of subrogation is required on all applicable policies. Endorsements must be provided with COI.**

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-written day notice of cancellation, required on all certificates or by applicable policy endorsements	Bodily Injury and Property Damage Per occurrence - aggregate
Commercial General Liability including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Aggregate

1.3 In the event of accidents of any kind related to the License, Licensee must furnish the City with copies of all reports of any accidents within 10 days of the accident.

1.4 Licensee shall obtain and maintain in full force and effect for the duration of the License, and any extension thereof, at Licensee's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.

1.5 Licensee is required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Licensee shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Engineering Services
P.O. Box 9277
Corpus Christi, TX 78469-9277

1.6 **Licensee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**

1.6.1 Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;

1.6.2 Provide 30 calendar days advance written notice directly to City of any suspension, cancellation or non-renewal of coverage, and not less than 10 calendar days advance written notice for nonpayment of premium.

1.7 Within five calendar days of a suspension, cancellation or non-renewal of coverage, Licensee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Licensee's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of the License.

1.8 Nothing herein contained shall be construed as limiting in any way the extent to which Licensee may be held responsible for payments of damages to persons or property resulting from Licensee's performance covered by the License.

1.9 It is agreed that Licensee's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.

1.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.



City of
Corpus
Christi

EXHIBIT D

CITY OF CORPUS CHRISTI
DISCLOSURE OF INTEREST

Corpus Christi Code § 2-349, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA". See next page for Filing Requirements, Certification and Definitions.

COMPANY NAME: _____

STREET ADDRESS: _____ **P.O. BOX:** _____

CITY: _____ **STATE:** _____ **ZIP:** _____

FIRM IS: 1. Corporation 2. Partnership 3. Sole Owner
 4. Association 5. Other _____

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name

Job Title and City Department (if known)

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name

Title

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name

Board, Commission or Committee

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name

Consultant

FILING REQUIREMENTS

If a person who requests official action on a matter knows that the requested action will confer an economic benefit on any City official or employee that is distinguishable from the effect that the action will have on members of the public in general or a substantial segment thereof, you shall disclose that fact in a signed writing to the City official, employee or body that has been requested to act in the matter, unless the interest of the City official or employee in the matter is apparent. The disclosure shall also be made in a signed writing filed with the City Secretary. [Ethics Ordinance Section 2-349 (d)].

CERTIFICATION

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested, and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas, as changes occur.

Certifying Person: _____ Title: _____

Signature of Certifying Person: _____ Date: _____

DEFINITIONS

- a. "Board member." A member of any board, commission, or committee of the city, including the board of any corporation created by the city.
- b. "Economic benefit". An action that is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof.
- c. "Employee." Any person employed by the city, whether under civil service or not, including part-time employees and employees of any corporation created by the city.
- d. "Firm." Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.
- e. "Official." The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads, and Municipal Court Judges of the City of Corpus Christi, Texas.
- f. "Ownership Interest." Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate, or holding entity. "Constructively held" refers to holdings or control established through voting trusts, proxies, or special terms of venture or partnership agreements.
- g. "Consultant." Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.

Schedule 1 – Equipment Retention Fee

Contractor understands and agrees that the Equipment Retention Fee is subject to the appropriation of funds by the City's governing body in the City's fiscal year in which it accrues; provided that, to the extent any such funds have not been appropriated, the Director of Corpus Christi Water will use commercially reasonable efforts to promptly pursue and obtain the appropriation of such funds in such time period.

Month of Term	Fee	34	\$15,692,732	70	\$9,377,445	106	\$3,064,174
<u>1</u>	\$21,483,417	35	\$15,517,281	71	\$9,202,048	<u>107</u>	\$2,888,835
<u>2</u>	\$21,307,919	36	\$15,341,832	72	\$9,026,653	<u>108</u>	\$2,713,498
<u>3</u>	\$21,132,422	37	\$15,166,384	73	\$8,851,260	<u>109</u>	\$2,538,163
<u>4</u>	\$20,956,927	38	\$14,990,938	74	\$8,675,868	<u>110</u>	\$2,362,829
<u>5</u>	\$20,781,434	39	\$14,815,493	75	\$8,500,478	<u>111</u>	\$2,187,497
<u>6</u>	\$20,605,941	40	\$14,640,049	76	\$8,325,090	<u>112</u>	\$2,012,166
<u>7</u>	\$20,430,450	41	\$14,464,607	77	\$8,149,703	<u>113</u>	\$1,836,838
<u>8</u>	\$20,254,961	42	\$14,289,167	78	\$7,974,317	<u>114</u>	\$1,661,511
<u>9</u>	\$20,079,473	43	\$14,113,728	79	\$7,798,933	<u>115</u>	\$1,486,185
<u>10</u>	\$19,903,986	44	\$13,938,290	80	\$7,623,551	<u>116</u>	\$1,310,862
<u>11</u>	\$19,728,501	45	\$13,762,854	81	\$7,448,170	<u>117</u>	\$1,135,540
<u>12</u>	\$19,553,017	46	\$13,587,420	82	\$7,272,791	<u>118</u>	\$960,219
<u>13</u>	\$19,377,534	47	\$13,411,987	83	\$7,097,413	<u>119</u>	\$784,901
<u>14</u>	\$19,202,053	48	\$13,236,555	84	\$6,922,037	<u>120</u>	\$1
<u>15</u>	\$19,026,573	49	\$13,061,125	85	\$6,746,663		
<u>16</u>	\$18,851,095	50	\$12,885,697	86	\$6,571,290		
<u>17</u>	\$18,675,618	51	\$12,710,269	87	\$6,395,919		
<u>18</u>	\$18,500,143	52	\$12,534,844	88	\$6,220,550		
<u>19</u>	\$18,324,669	53	\$12,359,420	89	\$6,045,182		
<u>20</u>	\$18,149,196	54	\$12,183,997	90	\$5,869,815		
<u>21</u>	\$17,973,725	55	\$12,008,576	91	\$5,694,450		
<u>22</u>	\$17,798,256	56	\$11,833,157	92	\$5,519,087		
<u>23</u>	\$17,622,787	57	\$11,657,739	93	\$5,343,726		
<u>24</u>	\$17,447,321	58	\$11,482,322	94	\$5,168,366		
<u>25</u>	\$17,271,855	59	\$11,306,908	95	\$4,993,007		
<u>26</u>	\$17,096,391	60	\$11,131,494	96	\$4,817,651		
<u>27</u>	\$16,920,929	61	\$10,956,082	97	\$4,642,296		
<u>28</u>	\$16,745,468	62	\$10,780,672	98	\$4,466,942		
<u>29</u>	\$16,570,008	63	\$10,605,263	99	\$4,291,590		
<u>30</u>	\$16,394,550	64	\$10,429,856	100	\$4,116,240		
<u>31</u>	\$16,219,093	65	\$10,254,450	101	\$3,940,892		
<u>32</u>	\$16,043,638	66	\$10,079,046	102	\$3,765,545		
<u>33</u>	\$15,868,185	67	\$9,903,643	103	\$3,590,200		
		68	\$9,728,242	104	\$3,414,856		
		69	\$9,552,843	105	\$3,239,514		