

SERVICE AGREEMENT NO. 3436

DEMAND RESPONSE PROGRAM SERVICES

THIS **Demand Response Program Services Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and EnelX North America, Inc. ("Provider"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Provider has bid to provide Demand Response Program Services in response to Request for Proposal No. 3436 ("RFP"), which RFP includes the required scope of work and all specifications and which RFP and the Provider'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.

NOW, THEREFORE, City and Provider agree as follows:

1. Definitions.

(A) *Upgrade Site(s)*. The "Upgrade Site" refers to the O.N. Stevens Water Treatment Plant, 13101 Leopard St. in Corpus Christi, Texas, 78410, for which Provider will provide the Generator Compliance Project (as such services are described in further detail herein).

(B) *Enrollment Date*. The "Enrollment Date" refers to the date specified in the Provider's enrollment e-mail to the City stating that the Upgrade Site is enrolled to participate in one or more specified programs, as described in the attached **Attachment A - Exhibit 2**, the Program Rule Attachment ("PRA").

(C) *Reimbursement Term*. The "Reimbursement Term" shall commence as of the Enrollment Date and continue through the period of time identified in the attached **Attachment B - Schedule 1** ("Reimbursement Schedule"), as may be adjusted pursuant to Section 4(b) below.

2. **Scope**. Provider will provide Demand Response Program Services ("Services") in accordance with the attached Scope of Work, as shown in **Attachment A**, which includes an overview of the emissions control system attached there to as **Attachment A - Exhibit 1**, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety, and in accordance with Exhibit 2.

(A) Provider will facilitate the provision of certain necessary ancillary equipment modifications at the Upgrade Site, as: (i) such modifications are required to comply with the Environmental Protection Agency administrative

ruling referred to as RICE NESHAP, as such requirements exist as of the Effective Date, in order to utilize on-site generation in connection with City's participation in one or more of the programs described in the PRA, and/or; (ii) such modifications are otherwise mutually agreed upon between the parties and required in order to utilize on-site generation in connection with City's participation in the program(s) at the Upgrade Site, as described in more detail in this Section 2 and in Attachment A and Exhibit 2.

(B) Provider will manage the Generator Compliance Project and pay for the Generator Compliance Project Costs as shown in the Reimbursement Schedule, and as adjusted pursuant to Section 4 below ("Project Cost Adjustments"). Except as set forth in Section 4 below. As used herein, "Generator Compliance Project" refers to, collectively, the services and deliverables for the Upgrade Site for which Provider will pay, as described in this Section 2. The Generator Compliance Project will be completed in accordance with Attachment A and Exhibit 2 and with the completion schedule provided in **Attachment A - Exhibit 3**, the "Generator Compliance Project Completion Schedule." The costs of these services and deliverables, including permitting costs, are collectively referred to herein as "Generator Compliance Project Costs." Title to any deliverables of the Generator Compliance Project will transfer upon delivery.

(C) At the Upgrade Site, City is solely responsible for any fees or costs in addition to the Generator Compliance Project Costs associated with the Generator Compliance Project, including but not limited to maintenance, additional professional services, replacement parts, fuel costs, and insurance. Provider is responsible for the permitting costs.

(D) At the Upgrade Site, City will operate and maintain the generator and deliverables at all times in accordance with the written instructions of the manufacturer, Provider, and Provider's subcontractors and agents. In addition, City will operate the equipment consistent with information that may be outlined in an associated quote for the deliverables. City will use fuels with sulfur content lower than 15 ppm by weight or other contaminants such as siloxanes, phosphorus, zinc, barium, and lead. City will record all operating parameters on an hourly basis.

(E) During the Term, City agrees to provide reasonable access and cooperation to Provider, its subcontractors, and agents to the Upgrade Site in order to deliver and install the deliverables and to provide all related services. During the Term, City will allow Provider to remotely control the operation of the generators at all times for testing, curtailment, and other related purposes; provided, that City may elect to not allow Provider to remotely control the generators by providing written notice to Provider.

3. Term. This Agreement commences upon the date of issuance of a notice to proceed from the Contract Administrator or the Contracts and Procurement

Division, or the performance date listed in the notice to proceed, whichever is later (the "Effective Date") and expires on September 30, 2026.

4. **Payment and Reimbursement.** Payments will be made in accordance with the attached PRA which may be updated from time to time by written notice of the Provider if the terms of the ERCOT program change.

(A) *Reimbursement Deductions.* For the Upgrade Site, City will begin to accrue Capacity Payments and/or Energy Payments pursuant to this Agreement beginning as of the Enrollment Date. For a given Upgrade Site, Provider will pay Capacity Payments and/or Energy Payments to City, less all or a portion of the Reimbursement Deduction (as identified in the Reimbursement Schedule), following the Enrollment Date for the Upgrade Site during the Reimbursement Term. Provider will pay Capacity Payments and/or Energy Payments in accordance with the PRA, the table below, and **Attachment B**, which is attached hereto and incorporated by reference.

Demand Response Program	Aggregate Anticipated Capacity (kW)	Capacity Payment Rate	Energy Payment Rate
Emergency Response Service	2,679	70%	N/A

Subject to the adjustments detailed in Section 4(B), Provider will deduct Generator Compliance Project Costs from Capacity Payments and/or Energy Payments otherwise due to City for the Upgrade Site over the Reimbursement Term as shown in the Reimbursement Schedule. Following the Reimbursement Term, Provider will pay Capacity Payments and/or Energy Payments to City for Upgrade Site. The amount to be reimbursed in accordance with the Reimbursement Schedule is limited to the actual Generator Compliance Project Costs as shown by proper documentation of the Provider, including receipts, at the time of acceptance by the City of the completed Generator Compliance Project.

(B) *Project Cost Adjustments.* The parties agree that the Generator Compliance Project Cost identified in the Reimbursement Schedule is an initial estimate. Provider reserves the right to adjust Reimbursement Deductions and/or Reimbursement Term (as identified in the Reimbursement Schedule) at its sole discretion in the event that the Generator Compliance Project Costs change by 30% or less than the amount listed in the Reimbursement Schedule. Provider will provide no less than 30 days' notice of any such adjustment. If the Generator Compliance Project Cost listed in the Reimbursement Schedule changes by more than 30% percent, then Provider may adjust Reimbursement Deductions and/or Reimbursement Term, only in the event that Provider obtains prior written approval from City. For avoidance of doubt, the cumulative amount of all changes cannot exceed 30% of the amount listed in the Reimbursement Schedule without prior written approval of the City.

5. **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: Utilities Department
Phone: (361) 826-1627
Email: DianaZ@cctexas.com

6. **Insurance; Bonds.**

(A) Before performance can begin under this Agreement, the Provider must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in **Attachment C**, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

(B) In the event that a payment bond, a performance bond, or both, are required of the Provider to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

7. **Inspection and Acceptance.** City may inspect all Services or products supplied before acceptance. Any Services or products that are provided but not accepted by the City must be corrected or re-worked immediately at no charge to the City.

8. **Warranty.**

(A) The Provider 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 Provider warrants that it has clear title to the products and that the products are free of liens or encumbrances.

(B) In addition, the products purchased under this Agreement shall be warranted by the Provider or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. **Attachment D** is attached to this

Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

(C) Provider warrants that all Services will be performed in accordance with the standard of care used by similarly situated contractors performing similar services.

(D) **Warranty Limitations.** IF THE SERVICES BECOME OR ARE LIKELY TO BECOME THE SUBJECT OF ANY THIRD PARTY INTELLECTUAL PROPERTY INFRINGEMENT CLAIM OR ACTION, PROVIDER MAY, AT PROVIDER'S SOLE OPTION, EITHER: (I) REPLACE SUCH SERVICES WITH AN EQUALLY SUITABLE SERVICE FREE OF INFRINGEMENT; (II) MODIFY OR OBTAIN A LICENSE FOR THE SERVICES SO THAT THEY NO LONGER INFRINGE ON ANY RIGHTS; OR (III) AFTER PROVIDER HAS DEMONSTRATED ITS GOOD FAITH EFFORTS TO ACHIEVE THE FOREGOING WITHOUT SUCCESS, TERMINATE THE AGREEMENT. EXCEPT AS PROVIDED HEREIN, THE SERVICES (AND ANY SOFTWARE, HARDWARE, OR OTHER COMPONENT THEREOF) ARE PROVIDED AS IS WITHOUT ANY WARRANTY OF ANY KIND. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

9. **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 appropriations 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.
10. **Independent Contractor.** Provider 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 Provider be considered an employee of the City.
11. **Subcontractors.** Provider may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Provider 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 Provider is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Provider. 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 Provider 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.

12. **Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.
13. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
14. **Taxes.** The Provider 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.
15. **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

IF TO PROVIDER:

Enel X
Attn: Greer Gardner
Title: Senior Business Development Manager
Address: One Marina Park Drive, Suite 400 Boston, MA 02210
Phone: (617) 224-9900
Fax: N/A

16. ***PROVIDER 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 PROVIDER OR RESULTS FROM THE NEGLIGENT ACT,***

OMISSION, MISCONDUCT, OR FAULT OF THE PROVIDER OR ITS EMPLOYEES OR AGENTS. PROVIDER 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 PROVIDER UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

17. Termination.

(A) Either Party may terminate this Agreement for the other Party's failure to comply with any of the terms of this Agreement. The non-defaulting Party must give the defaulting Party 30 days' written notice of the breach. If the defaulting Party has not cured within the 30-day period, the non-defaulting Party may terminate this Agreement immediately thereafter. The City may also terminate this Agreement upon 24 hours written notice to the Provider for failure to pay or provide proof of payment of taxes as set out in this Agreement.

(B) If this Agreement is terminated, prior to the expiration date, for any reason other than the Provider's failure to comply with any terms of the Agreement and Provider has not received full reimbursement for the Generator Compliance Project Costs, City will pay to Provider within 30 days of the termination date the amount of the Generator Compliance Project Costs that have not yet been reimbursed in accordance with Section 4.

18. Owner's Manual and Preventative Maintenance. Provider 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. Provider must provide such documentation upon delivery of such equipment.

19. Right to Audit Records. The City may audit Provider's records to determine its compliance with the terms of this Agreement. Provider, 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, including the Generator Compliance Project Costs.

20. Limitation of Liability. Each Party's maximum liability under this Agreement is limited to the total amount of the Generator Compliance Project Costs. In no event shall either Party be liable for incidental, consequential or special damages.

21. **Assignment.** No assignment of this Agreement by the Provider, 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 Provider 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.
22. **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.
23. **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 Provider's proposal response (Exhibit 2).
24. **Certificate of Interested Parties.** Provider 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.
25. **Governing Law.** Provider 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.
26. **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 Provider agrees that the contract can be terminated if the Provider knowingly or intentionally fails to comply with a requirement of that subchapter.
27. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

28. Aggregate Data Collection and Usage. The City acknowledges and agrees that Provider 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 Provider's business; and (iii) share Aggregate Data with third parties or publish any reports, white papers, or other summaries based on Aggregate Data.

29. 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, Provider may share Confidential Information with affiliates to the extent permitted by applicable law and the Provider 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 Provider 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 Provider 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 Provider with notice of such request so that Provider 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 Provider. Should Provider 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.

31. Ethics and Anticorruption. Provider declares that in managing its business activities and its relationships, it adheres to the principles contained in its Code of Ethics, the Zero Tolerance of Corruption Plan and the Organisation & Management Model adopted pursuant to Italian Legislative Decree 231/2001 (available at <https://www.enel.com/investors/a/2016/08/code-of-ethics>). Moreover, as a subsidiary of Enel S.p.A., Provider declares its adherence to the United Nations Global Compact. Provider wishes its counterparties to refer to the same principles in managing their business activities and relationships. Provider prohibits any promises, offers, or requests of illegal payments, in cash or other benefits, with the objective of gaining an advantage in its relationships with stakeholders, and this prohibition is extended to all of its employees.

32. Privacy laws. The parties shall comply at all times with the requirements of applicable data privacy laws, including Regulation (EU) 2016/679 known as the General Data Protection Regulation, as may be amended from time to time. The Privacy Notice Standard available at www.enelx.com/northamerica/privacy-policy shall form part of the Agreement and is hereby incorporated by reference.

PROVIDER

DocuSigned by:

Signature: _____

Joel Obillo

934981681CD8404...

Printed Name: _____

Joel Obillo

Title: _____

Vice President

Date: _____

May 5, 2021 | 1:38 PM EDT

CITY OF CORPUS CHRISTI

Josh Chronley

Interim Assistant Director, Contracts and Procurement

Date: _____

APPROVED AS TO LEGAL FORM:

Assistant City Attorney

Date

Attached and Incorporated by Reference:

Attachment A: Scope of Work

Attachment A – Exhibit 1: Emissions Control System Overview

Attachment A – Exhibit 2: Program Rule Attachment

Attachment A – Exhibit 3: Generator Compliance Project Completion Schedule

Attachment B: Bid/Pricing Schedule

Attachment B – Schedule 1: Reimbursement Schedule

Attachment C: Insurance and Bond Requirements

Attachment D: Warranty Requirements

Incorporated by Reference Only:

Exhibit 1: RFP No. 3436

Exhibit 2: Provider’s Proposal Response

Attachment A -Scope of Work

1.1. General Requirements

- A. The Demand Response Program is designed to be deployed by ERCOT (Electricity Reliability Council of Texas) when there is a high demand for electricity that potentially risks system reliability. ERCOT solicits qualified loads and generators to be available for deployment of load curtailment for use during an electric grid emergency. These customers enroll in ERS through a qualified scheduling entity (QSE) to provide load reduction and on-site generation capabilities to reduce the possibility of rolling blackouts within the ERCOT electric grid.
- B. ERS resources are designed to be deployed under Energy Emergency Alert Level 1, Level 2, or Level 3. Energy Emergency Alert Level 1 and Level 2 events are preliminary and intermediate stage events intended to limit the need for Level 3 events. ERCOT procures ERS resources three times each year. Each of the three Standard Contract Terms is split into a four-month season; each season is comprised of up to six time periods for participation and two response time options, either a ten minute or a 30-minute response time.
- C. The Contractor shall finance and implement equipment upgrades to meet compliance standards for participation in Demand Response (DR) Program and permitting costs for three (3) diesel generators located at the O.N. Stevens Water Treatment Plant (ONSWTP), 13101 Leopard St. in Corpus Christi, Texas, 78410 and improve the generators' overall performance and capabilities.
- D. The Contractor shall be responsible for turnkey solutions for DR program, will manage the program from the beginning to the end including equipment installation for generator upgrades and permitting, enrollment in DR program and structure demand response payments to cover costs.

1.2. Scope of Work

- A. 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 develop a generator upgrade project timeline including shutdown and testing for all generators and provide all labor, equipment and materials required.
 - b. 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 contractor's off-site manufacturing and fabrication, work site activities and their interdependences.

- c. The Contractor shall recommend and use one of the baseline methodologies ERCOT recommends that will maximize ONSWTP's earning potential.
 - d. The Contractor shall apply for and assume cost for all required permitting, including federal, state and local entities.
 - e. The Contractor shall assume liability for non-compliance with USEPA, TCEQ, in behalf of the City of Corpus Christi, etc.
 - f. The Contractor shall provide estimated Capacity Payments, Capacity Payment Split and Project Cost Deductions for Years 1 through 5 and include program periods (Spring, Summer and Fall).
- B. The Contractor shall install the proper required emissions upgrades for the non-compliant generators to meet RICE NESHAP (Reciprocating Internal Combustion Engines National Emission Standards for Hazardous Air Pollutants), recommend capacity pricing and performance and calculated payments, explain how we are protected from underperformance penalties or fines.
- a. The Contractor shall be responsible for reviewing existing generator specifications, see Exhibit 1, and propose upgrade for generators to participate in DR program.
 - b. The Contractor shall evaluate asset compliance, including federal, state and local requirements.
 - c. The Contractor shall outline the upgrades to meet RICE NESHAP for participation in the DR program.
 - d. The Contractor shall purchase and install equipment to bring generators into compliance, complete the initial stack test and include an annual maintenance plan.
 - e. The Contractor shall describe how they will measure event performance, calculate payment and project cost deductions from earnings and revenue percentage split after cost deductions are in place.
 - f. The Contractor shall explain how City is protected from non-performance and will not incur any out of pocket expenses by participating in the program.
- C. The Contractor shall develop and be responsible for compliance services including RICE NESHAP non-emergency use requirements and monitoring plan for ONSWTP generators.
- a. 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.
 - b. The Contractor shall provide annual testing and compliance reporting to ensure the generators are working properly.

- c. The Contractor shall submit all compliance reports to air agency or EPA.
- d. The Contractor shall monitor regulatory changes, policy changes affecting DR payments and provide ongoing recommendations.
- D. The Contractor shall provide a communication plan, technical support and a real-time data plan.
 - a. The Contractor shall develop a Communication Plan in order to respond to DR events.
 - b. The Contractor shall provide a weekly schedule and a two-week outlook on project management and include safety items, weather delays, etc.
 - c. The Contractors shall provide 24x7x365 technical support with an application available on desktop and portable devices and real-time data.
 - d. The Contractor shall provide alerts for situations such as grid issued and support to help meet curtailment targets.
- E. The Contractor shall provide all operations and maintenance (O&M) manuals for all provided equipment and materials.
- F. 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.
- G. The Contractor shall provide site requirements needed to perform work such as laydown requirements, work hours, access to ONSWTP, etc.
- H. The Contractor shall be responsible for providing construction power, lighting, office/trailer, potable water, sanitary stations, waste/disposal services.

1.3. Work Site and Conditions

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

Attachment A

Exhibit 1

Emissions Control System Overview



Description	Generator 1	Generator 2	Generator 3
Engine Model	Cummins: DQKC-4489668	Cummins: DQKC-4489668	Cummins: DQKC-4489668
Specification	5 KV (4160) volts, 3 Phase	5 KV (4160) volts, 3 Phase	5 KV (4160) volts, 3 Phase
Serial No.	A010191067	A010191068	A010191069
Power	2000 KW	2000 KW	2000 KW
Fuel	ULSC	ULSD	ULSD
Exhaust Flow Rate	15,500 acfm	15,500 acfm	15,500 acfm
Exhaust Temperature	890°F	890°F	890°F
Catalyst Model	AirClarity 2000 or equivalent	AirClarity 2000 or equivalent	AirClarity 2000 or equivalent
Type	Catalytic Converter	Catalytic Converter	Catalytic Converter
# of Elements required	1 per engine	1 per engine	1 per engine
Cell Density	200 cpsi	200 cpsi	200 cpsi
Approx. Dimensions	33.5x24 in.	33.5x24 in.	33.5x24 in.
Approx. Weight (without / with catalyst)	~300 lbs.	~300 lbs.	~300 lbs.
Approx. Pressure Drop	~2.5" w.c.	~2.5" w.c.	~2.5" w.c.
Connection Size	16" Flange	16" Flange	16" Flange
Exhaust Component	% Reduction	% Reduction	% Reduction
CO	70	70	70
NOx			
NMHC			
PM			

Attachment A

Exhibit 2

Program Rule Attachment

Emergency Response Service

1. **Program Description.** The Electric Reliability Council of Texas (“ERCOT”) Emergency Response Service ten (10) minute (“ERS-10”) and thirty (30) minute (“ERS-30”) and together with ERS-10, “ERS”) program (“Program”) is designed to be deployed by ERCOT when demand for electricity is high and system reliability is at risk. ERS is meant to help alleviate the potential for blackouts and brownouts by providing ERCOT with resources to call upon in a defined emergency situation.
2. **Program Rules.** The terms herein will reflect ERS Program terms and conditions, which may be amended from time to time by ERCOT, and the current terms of which are summarized in the table below:

Program Periods	Customer may contract with Provider to provide ERS year-round during the “Program Periods” defined by ERCOT as February to May, June to September, and October to January.
Program Enrollment	Enrollment for the Program Periods takes place annually on February 1, June 1 or October 1 (“Enrollment Period”). For each Program Period, Provider may enroll Customer in the Program for either ERS-10 or ERS-30.
Program Hours	<p>Customer can elect to participate during any or all of the ERCOT defined time periods: Time Period 1 (“TP1”), Time Period 2 (“TP2”), Time Period 3 (“TP3”), Time Period 4 (“TP4”), Time Period 5 (“TP5”), Time Period 6 (“TP6”), Time Period 7 (“TP7”), and/or Time Period 8 (“TP8”). The time periods are described in Central Prevailing Time (“CPT”) as follows:</p> <p>TP1: Hours Ending (as defined below) 0600 – 0900 (5:00:00 a.m. to 9:00:00 a.m. CPT) Monday through Friday except ERCOT Holidays.</p> <p>TP2: Hours Ending 1000 - 1300 (9:00:00 a.m. to 1:00:00 p.m. CPT) Monday through Friday except ERCOT Holidays.</p> <p>TP3: Hours Ending 1400 - 1600 (1:00:00 p.m. to 4:00:00 p.m. CPT) Monday through Friday except ERCOT Holidays.</p> <p>TP4: Hours Ending 1700 - 1900 (4:00:00 p.m. to 7:00:00 p.m. CPT) Monday through Friday except ERCOT Holidays.</p> <p>TP5: Hours Ending 2000 - 2200 (7:00:00 p.m. to 10:00:00 p.m. CPT) Monday through Friday except ERCOT Holidays.</p> <p>TP6: Hours Ending 0600 – 0900 (5:00:00 a.m. to 9:00:00 a.m. CPT) Weekends and ERCOT Holidays.</p> <p>TP7: Hours Ending 1600 – 2100 (3:00:00 p.m. to 9:00:00 p.m. CPT) Weekends and ERCOT Holidays.</p> <p>TP8: All other hours.</p> <p>The term “Hours Ending” shall mean an integer value between hours 1 and 24 representing the hour block ending with that clock hour. For example, hour 1 refers to the time between 00:01 to 01:00.</p>
Event Trigger	Demand response events will only be called in the event of an emergency, as defined by ERCOT.
Advanced Notification	Customers enrolled in the Program for ERS-10 must be able to respond to a demand response event notice within ten (10) minutes of such notice provided by Provider. Customers enrolled in the Program for ERS-30 must be able to respond to an ERS demand response event notice within thirty (30) minutes of such notice provided by Provider.
Event Frequency & Duration	Maximum of eight (8) hours per Program Period, unless a demand response event is still in effect when the eighth hour lapses, after which Customer is obligated to respond for up to four (4) additional hours; provided that Customer may voluntarily extend the maximum number of availability hours during any Program Period by providing written notice to Provider sixty (60) days prior to the start of the Program Period. Customers that opt to have their availability hours extended will be re-obligated at ERCOT’s discretion.

Testing Requirement	ERCOT may conduct a load-shedding test of each Customer resource once every three hundred thirty (330) days unless such resource has met the ERCOT Performance Factor (as defined below) requirements during a demand response event occurring in the preceding three hundred thirty (330) days. In addition, if a Customer resource does not meet the ERCOT Availability Factor (as defined below) requirements for an entire Program Period, ERCOT may re-test such resource at any time.
Metering Equipment	ERS resources are required to have an ERCOT-approved meter capable of measuring energy consumption or net injection of energy in fifteen (15) minute intervals and meeting the accuracy standards prescribed by ERCOT so that performance can be monitored and recorded.
Prohibition of Other Market Activity	No part of the contracted capacity of an ERS resource can be committed to other Programs where it receives a separate reservation payment for such an obligation.

The foregoing table reflects the current terms and conditions of the Program, which may be amended by Provider from time to time by providing email notice to Customer with no further act required by Provider or Customer.

Customer shall be considered enrolled in the Program and eligible to earn demand response payments upon the date referenced in the Program enrollment notification email sent by Provider to Customer, such email to indicate Customer enrollment as ERS-10 or ERS-30.

3. Customer Capacity.

- a. **Accepted Capacity.** "Accepted Capacity" shall represent the best estimate of Customer's expected curtailment based on analysis of consumption data and pre-enrollment testing. Customer agrees that the Accepted Capacity may be adjusted by Provider in the future to reflect actual performance, changes in facility operations, Program rules, regulations and/or other relevant information.
- b. **Delivered Capacity.** "Delivered Capacity" will be the calculated performance with respect to Customer's baseline ("Performance Factor") as adjusted by Customer's availability factor ("Availability Factor"), as set forth in the ERCOT protocols and the ERS Technical Requirements and Scope of Work document for the relevant Program Period. Customer's Delivered Capacity will be determined at the end of each Program Period by Provider and ERCOT.

4. Payments.

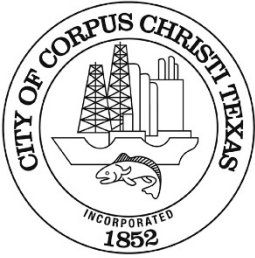
a. Payments to Customer.

- i. **Capacity Payments.** Provider will pay Customer a Capacity Payment Rate in connection with Customer's making available Delivered Capacity for participation in ERS as adjusted by Customer's Availability Factor and Performance Factor ("Capacity Payments"). If the product of a Customer's Availability Factor and Performance Factor is less than 50%, Customer's Delivered Capacity will be adjusted to zero (0) for purposes of calculating Capacity Payments.
 - ii. **Payment Cap.** Should Delivered Capacity exceed Accepted Capacity, Customer will be paid at Accepted Capacity assuming Customer meets all availability requirements as determined by ERCOT.
 - iii. **Underperformance.** In no event shall Customer be penalized for underperformance or non-performance, other than to have payments reduced to reflect availability and Delivered Capacity as described in Section 3(b) above.
- b. **Payment Timing.** Provider shall make all payments associated with Customer's participation in ERS to Customer following the Program Period, and such payments shall be made within forty-five (45) days of Provider's receipt of total payment from ERCOT.
 - c. **Timing of First Payment.** Initial payments will begin to accrue on the first day of the Program Period with ERCOT as defined in Section 2.

Generator upgrade project timeline

Make sure you have plenty of time to complete the project before the DR program begins





Attachment B - RFP/Pricing Schedule

CITY OF CORPUS CHRISTI
Pricing Form
CONTRACTS AND PROCUREMENT DEPARTMENT
RFP No. 3436
Demand Response Program

PAGE 1 OF 1

DATE: April 22, 2021 | 1:36 PM EDT

Enel X North America, Inc.

DocuSigned by:

Joel Adillo

PROPOSER

AUTHORIZED SIGNATURE

1. Refer to "Instructions to Proposers" and Contract Terms and Conditions before completing proposal.
2. Provide your best price for each item.
3. In submitting this proposal, Proposer certifies that:
 - a. the prices in this proposal have been arrived at independently, without consultation, communication, or agreement with any other Proposer or competitor, for the purpose of restricting competition with regard to prices;
 - b. Proposer is an Equal Opportunity Employer; and the Disclosure of Interest information on file with City's Contracts and Procurement office, pursuant to the Code of Ordinances, is current and true.
 - c. Proposer has incorporated any changes issue through Addenda to the RFP in this pricing.

Item	Description	UNIT	Unit Price	Total
1	Generator 1 Upgrade Cost	EA	\$ 57,005.56	\$ 57,005.56
2	Generator 2 Upgrade Cost	EA	\$ 57,005.56	\$ 57,005.56
3	Generator 3 Upgrade Cost	EA	\$ 57,005.56	\$ 57,005.56
Total Cost of Upgrades				\$ 171,016.68
Estimated Demand Response Revenue		UNIT	Unit Price	Total
4	Year 1 Estimated Revenue	EA	\$ * (see below)	\$ 13,104.11 estimated
5	Year 2 Estimated Revenue	EA	\$	\$ 13,104.11 estimated
6	Year 3 Estimated Revenue	EA	\$	\$ 98,612 estimated
7	Year 4 Estimated Revenue	EA	\$	\$ 98,612 estimated
8	Year 5 Estimated Revenue	EA	\$	\$ 98,612 estimated
Total Estimated Revenues				\$ 322,043.22
Capacity Payment Split		City	Vendor	
	Percentage	% 70	% 30	
	Dollars	\$ 98,612	\$ 42,258	
Total Payment to the City				\$ 322,043.22

* Demand Response payment rates are set 3 times per year in seasonal auctions run by ERCOT. All providers are awarded the same rate, and we will pay the City of Corpus Christi at the market clearing price. \$52.58 is an estimation of the forecasted market clearing rate based on past annualized clearing rates.

Attachment B

Schedule 1

Reimbursement Schedule

Generator Compliance Project Cost	\$171,016.68
Reimbursement Term	24 months, beginning as of the Enrollment Date.
Reimbursement Deduction (per month)	<p>The maximum monthly Reimbursement Deduction is equal to the greater of:</p> <p>(a) \$7,125.70 (the "Monthly Deduction Amount"); and</p> <p>(b) the difference between (i) (A) the Monthly Deduction Amount <u>multiplied by</u> (B) the number of Elapsed Months, <u>minus</u> (ii) all prior Reimbursement Deductions.</p> <p>Where, "Elapsed Months" means the number of months that have elapsed since the commencement of the Reimbursement Term.</p> <p>For the avoidance of doubt, the maximum monthly Reimbursement Deduction will not exceed (1) the remaining unpaid Generator Compliance Project Costs or (2) total Capacity Payments and Energy Payments from the Upgrade Site(s) and, as applicable, the Contributing Site(s) for that given month.</p>

Attachment C - INSURANCE REQUIREMENTS

I. CONTRACTOR'S LIABILITY 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
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 Per Occurrence
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 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 thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

- E. Within five (5) calendar days of a suspension, cancellation, or non-renewal 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.

2020 Insurance Requirements

Ins. Req. Exhibit

Contracts for General Services – Services Performed Onsite – Professional Liability

04/14/2020 Risk Management – Legal Dept.

Attachment D Warranty Requirements

1. e2comply LLC Proposal/Scope of Work (SOW) – e2c2032 – 5 yr – 3 Gens – Rev C
Re: Corpis Christi WWTP
Dated: April 21, 2021 (revised, tax exempt)

- i. Shows that this project is warrantied for 60 months or 10,000 Hours from Commission Date.
- ii. References the e2comply LLC SOW with Enel X:

Acceptance of this Agreement is limited to and includes acceptance of the above terms, including all attachments, the Terms and Conditions, any documents incorporated by reference, and the MSA or SOW Agreement effective as of December 13, 2017, February 4, 2019 and June 1, 2020 by and between Enel X North America, Inc. (*formerly known as* EnerNOC, Inc.) and e2comply LLC.

2. e2comply LLC (“Subcontractor”) SOW with Enel X North America, Inc. (“Enel X”) states:

Limited Warranty. Subcontractor warrants, subject to the exclusions contained in this Section (5), that any Deliverables shall be free of defects in material and workmanship for the Warranty Period. This warranty excludes any issues and defects caused by Enel X (or its customer’s) abuse, neglect, or improper maintenance of the emission control system, engine, vehicle, or equipment, as specified in all owner’s and operation manuals or any other written information from Subcontractor. In addition, accessories or other parts, including internal parts, of the Deliverables furnished by Subcontractor, but manufactured by others, shall carry whatever warranty, if any, the manufacturers thereof have given to Subcontractor and which can be passed on to Enel X. Subcontractor agrees to cooperate in furnishing assignments of its rights thereto to Enel X from such manufacturers and suppliers. Subcontractor shall not be liable for any repairs, replacements, or adjustment to the Deliverables or any costs of labor performed by Enel X without Subcontractor’s prior written approval. The effects of corrosion, erosion, and normal wear and tear are specifically excluded from Subcontractor’s warranty. Subcontractor further represents that, following the provision of the Deliverables, the Generator will meet or exceed Emissions Standards for the term of the Customer Agreement, except in cases where the Generator’s engine fails or in cases where Customer does not meet the Conditions. As used herein, “Conditions” refers to the following requirements: i. Customer must operate and maintain the Deliverables in accordance with Subcontractor’s written instructions provided to Customer and any instructions and guidelines of the Deliverable’s manufacturers that have been provided in advance to Customer; ii. Customer must fuel with sulfur content lower than fifteen (15) ppm by weight or other contaminates such as siloxanes, phosphorus, zinc, barium, and lead; iii. Customer must operate the equipment consistent with Subcontractor’s reasonable requirements outlined in the Initial Quote or a Work Order, and; iv. Customer must record operating parameters on an hourly basis. Subcontractor represents and warrants that Services and Deliverables will be free and clear of all liens or other encumbrances. With respect to any Services, Subcontractor represents and warrants that Services will be performed in a workmanlike fashion in accordance with then-current industry standards. Subcontractor warrants that it will deliver and install all Deliverables in accordance with supplier and/or manufacturer’s requirements, if any. The warranties described in this Section (5) of the SOW are in addition to any representations or warranties identified in the MSA or any Work Order.