CONTRACT NO. 473-22-00009
BETWEEN
THE PUBLIC UTILITY COMMISSION OF TEXAS
AND
ENERGY AND ENVIRONMENTAL ECONCOMICS, INC.

The parties to this contract are the Public Utility Commission of Texas, an agency of the State of Texas, located at 1701 N. Congress Ave., Austin, Texas 78701 and Energy and Environmental Economics, Inc., with offices at 44 Montgomery St., Suite 1500, San Francisco, CA 94104.

Article 1. DEFINITIONS

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

1.1 "**PUCT,**" means the Public Utility Commission of Texas, an agency of the state of Texas, acting through its Executive Director and the agency's designated contract administrator.

1.2 "**Business day**" means a day the PUCT is open for business and is not observing a holiday.

1.3 "**Commission**" means the governing body of the PUCT.

1.4 "**Confidential information**" means information that is confidential under law, or that the PUCT or another entity has asserted in good faith is confidential.

1.5 "**Contractor**" means Energy and Environmental Economics, Inc. ("E3"), and any successors, heirs, and assigns.

1.6 "**May**" means "is authorized to."

1.7 "**Non-public information**" means information that has not yet been made generally publicly available regardless of whether it is confidential under the definition in 1.4. Information has been made publicly available if it has been published in a newspaper, book, periodical, website, or some other public forum, or has been shared publicly in an open meeting or in a public legislative hearing.

1.8 "**Services**" means any and all services performed and any and all goods and products delivered by Contractor as specified in the Statement of Work.

1.9 "**Statement of Work**" means the description of goods and services to be provided under this contract found in Exhibit 1 to this contract.

1.10 "**Parties**" means PUCT and Contractor. "**Party**" means PUCT or Contractor.

Article 2. COMPENSATION

2.1 **Compensation**. Contractor agrees to provide all Services (including labor, expenses, and any other services) described in the Statement of Work at the rates shown in table 2.1 and for a total price not to exceed $364,000. Contractor understands that neither the PUCT are responsible for payment of any costs or expenses exceeding this amount.

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

Table 2.1 – Hourly Rates

Title	Hourly Rate
Managing Partner	$725
Senior Partner	$600
Partner	$550
Senior Director	$500
Director	$480
Associate Director	$450
Senior Managing Consultant	$420
Managing Consultant	$385
Senior Consultant	$345
Consultant	$290
Associate	$250

2.2 **Payment Process**. Contractor must submit an invoice to the PUCT contract administrator and PUCT accounts payable no later than the 15th business day after the month that the Services were performed. The invoice must contain the name and title of the person performing Services and a brief description of work performed. No payment will be made for administrative overhead, overtime, or other costs not contemplated under this contract.

On the statement or invoice, Contractor must include a statement that the invoice accurately describes the Services performed and the Services were performed in compliance with the contract. The statement or invoice must include the vendor identification number issued by the Texas Comptroller or Contractor's federal taxpayer identification number, a description of the Services provided, and the name and division of the PUCT contract administrator.

Contractor must submit the invoice to the PUCT as follows:

By email to: Payables@puc.texas.gov

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

The PUCT contract administrator will review the invoice and any other relevant documentation to ensure the Services were performed in compliance with the contract. If the invoice does not contain

required information or documentation, or if the PUCT disputes that the Services were performed in compliance with the contract, the PUCT will reject the invoice and give the Contractor its reasons and the opportunity to submit a corrected invoice.

Upon approval of the invoice, the PUCT will pay the invoice. The PUCT will pay all undisputed invoices within 30 days of receipt.

2.3 **Release of Claims**. Contractor's acceptance of payment releases the PUCT of all claims for compensation owed in connection with this contract.

2.4 **Refund**. Contractor will promptly refund or credit within thirty calendar days any funds erroneously paid by the PUCT which are not expressly authorized under the contract.

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

2.6 **Records**. Contractor and its subcontractors, if any, must maintain records and books of account relating to Services provided under this contract. Contractor must, for a period of seven (7) years following the expiration or termination of this contract, maintain its records (electronic and paper) of the work performed under this contract. Records include but are not limited to correspondence concerning the subject of this contract between Contractor and the PUCT; Contractor's internal correspondence; and correspondence between Contractor and any third party. Contractor must make all records that support the performance of Services and payment available to any of the following PUCT, PUCT's designees, or the State Auditor during normal business hours with reasonable notice, upon the request of the PUCT contract administrator.

2.7 **Sole Compensation**. Payments under this Article are Contractor's sole compensation under this contract. Contractor must not incur expenses not contemplated under the Statement of Work, with the expectation that PUCT or the state of Texas will pay the expense.

Article 3. CONTRACT ADMINISTRATION

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

3.2 **Contractor Contract Administration**. Contractor designates its contract administrator as follows: Zachary Ming

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

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

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

Article 4. REPORTS AND RECORDS

4.1 **Written Reports**. Contractor must provide written reports to the PUCT in the form and with the frequency specified in the Statement of Work, or as otherwise agreed in writing between the Parties.

4.2 **Distribution of Consultant Reports**. Contractor agrees the PUCT has the right to distribute any consultant report associated with this contract, or to allow another Texas state agency or the Texas legislature to distribute it. The PUCT will also have the right to post any consultant report associated with this contract to the PUCT's website or to the website of a standing committee of the legislature. This provision does not waive any right to confidentiality that the PUCT may assert for the report or any portion thereof.

Article 5. SUBCONTRACTING PARTIES

5.1 **Use of Subcontractors**. The Parties acknowledge and agree that, at the time of execution of this contract, Contractor intends to perform the Services required under this Contract using its own employees. Contractor will notify the PUCT contract administrator of any other proposed subcontract and will work with the PUCT HUB Coordinator to procure such other subcontractor and to submit appropriate subcontractor selection documentation for approval prior to engaging any other subcontractor, such approval not to be unreasonably withheld. Any subcontract not contemplated at the initiation of this contract and any subsequent substitution of a subcontractor must be approved by an amendment according to the terms of Article 7.

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

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

Article 6. TERM AND TERMINATION

6.1 **Term**. The term of this Contract will begin on the date signed by the second party to sign and will continue in effect for a period of 18 months unless sooner terminated under Sections 6.2 or 6.3 of this Contract.

6.2 **Termination for Cause by the PUCT**. If Contractor fails to provide the goods or services contracted for according to the provisions of the contract, or fails to comply with any terms or conditions of the Contract, the PUCT may serve upon Contractor written notice requiring Contractor to cure such default. Unless within thirty (30) days after receipt of said notice by Contractor, said default is corrected or arrangements satisfactory to the PUCT, as applicable, for correcting the default have been made by Contractor, the PUCT may terminate this contract for default and will have all rights and remedies provided by law and under this contract. If the PUCT terminates Contractor for a violation of Section 18.12, of this contract, the PUCT need not provide any notice or opportunity for curing the default. The PUCT will not be liable for any damages or loss to Contractor as a result of termination for cause. Payments owed under this contract are not "damages." PUCT will make any payments owed under Article 2 Compensation.

6.3 **Termination for Cause by the Contractor**. If the PUCT fails to comply with any terms or conditions of the Contract, the Contractor may serve upon the PUCT written notice requiring the PUCT to cure such default. Unless within thirty (30) days after receipt of said notice by the PUCT, said default is corrected or arrangements satisfactory to the Contractor, as applicable, for correcting the default have been made by the PUCT, the Contractor may terminate this contract for default and will have all rights and remedies provided by law and under this contract. Contractor will not be liable for any damages or loss to PUCT as a result of termination for cause.

6.4 **Termination for the Convenience of the PUCT**. The PUCT may, upon thirty (30) days written notice to Contractor, terminate this contract whenever the interests of the PUCT so require. The PUCT will only reimburse those expenses already incurred at the time the notice is provided or expenses approved in writing, prior to Contractor incurring those expenses, for the purpose of wrapping up the contract. The PUCT will not be liable for any damages or loss to Contractor as a result of termination for convenience.

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

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

6.7 **Survival**. In the event that this Contract expires or is terminated pursuant to its terms, the rights and obligations of the Parties under it will end; provided that the provisions of Sections 2.3 through 2.6, 3.5, 4.2, 6.4 through 6.6. 7.5, 9.2, 9.4 through 9.6, 17.2, 19.1 through 19.5, and Articles 1, 10, 12, 14, 15, 16, 20, 21, 23, and 29 will survive in their entirety.

Article 7. ASSIGNMENT, AMENDMENTS, AND MODIFICATIONS

7.1 **Material Change Requests**. The PUCT may propose changes to the Statement of Work. Upon receipt of a written request from the PUCT for a change to the Statement of Work, Contractor must, within the deadline specified in the request, or if no deadline is specified within a reasonable

time after the request, submit to the PUCT a detailed written estimate of any proposed price and schedule adjustments to this contract. No changes to the Statement of Work, will occur without the Parties' written consent as provided in accordance with the terms stated in this contract.

7.2 **Changes in Law, Rules, or Rulings**. Changes in federal or state legislation, rules and regulations or rulings by the PUCT after the effective date of this contract may require modification of the terms of this contract, including an increase or decrease in Contractor's duties or compensation. In the event of changes to statutes, rules, or regulations affecting the terms of this contract, the PUCT and Contractor must negotiate the terms of a contract modification in good faith and incorporate the modification into this Contract by written amendment.

7.3 **No Assignment of Duties**. This contract will be binding upon and inure to the benefit of the permitted successors and assigns of any Party (including by merger of Contractor or otherwise by operation of law); provided, however, that Contractor may not otherwise, without the prior written consent of the PUCT, assign or transfer this contract or any obligation incurred under this contract. Any attempt by Contractor to assign or transfer this contract or any obligation incurred under this contract, in contravention of this article, will be voidable at the PUCT's sole discretion.

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

7.5 **Binding on Successors**. The terms of this contract will be binding on any successor organization of any of the Parties.

Article 8. REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 **Warranty of Performance**. Contractor represents, warrants, and covenants that it will perform the Services outlined in the Statement of Work, in a professional and workmanlike manner, consistent with professional standards of practice in the professional industry.

8.2 **Warranty of Services**. Contractor warrants that the Services will be rendered by the qualified personnel identified in Section 19.8 of this contract. If Services provided under this contract require a professional license, then Contractor represents, warrants, and covenants that the activity will be performed only by duly licensed personnel.

Article 9. RISK OF LOSS AND PROPERTY RIGHTS

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

9.2 **Ownership**. Except for materials where any intellectual property rights are vested in a third party, such as software or hardware, in which case such rights remain the property of the third party, all finished materials, deliverables, conceptions, or products created or prepared for or on behalf of the PUCT and purchased by the PUCT, or on behalf of the PUCT, that the PUCT has accepted as part of the performance of Services hereunder, will be the PUCT's property exclusively and will be given to the PUCT either at the PUCT's request during the term of the Contract or upon termination or expiration of the contract. Notwithstanding the foregoing,

materials created, prepared for, or purchased exclusively by the PUCT or on behalf of the PUCT are the PUCT's exclusive property regardless of whether delivery to the PUCT is effectuated during or upon termination or expiration of this contract.

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

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

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

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

9.7 **Provision to be Inserted in Subcontracts**. Contractor must insert a provision containing Sections 9.2 and 9.6 of this contract in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the PUCT under this contract.

Article 10. PUBLIC INFORMATION

10.1 **Texas Public Information Act**. (Texas Government Code Chapter 552). The Parties acknowledge that notwithstanding any other provisions of this contract, the Texas Public Information Act ("PIA") governs the treatment of all information held by or under the control of the PUCT. The PUCT will notify Contractor of requests for Contractor's information as required under the PIA.

10.2 **Agreement Not Confidential.** The Parties acknowledge that not all terms of this contract may be confidential under the PIA, regardless of whether those terms are marked "Proprietary," "Trade Secret," or "Confidential." Contractor further acknowledges that in the event of a dispute over the release of a proposal or part of a proposal the PUCT is bound by the decision made by the Office of the Attorney General of Texas.

10.3 **Contractor's Duty to Provide Public Information**. Contractor is required, at no additional cost to the state, to make available in a format that is accessible by the public any information created or exchanged with the state pursuant to this contract. For the purpose of Section 10.3 of this contract, paper documents, Adobe Portable Document Format files (.pdf), Microsoft Excel spreadsheets (.xls), Microsoft Word documents (.docx), and Hypertext Markup Language (.html)

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

Article 11. CONFLICTS OF INTEREST AND EMPLOYMENT RESTRICTION

11.1 **No Conflicting Relationships**. Contractor certifies to the PUCT that no existing or contemplated relationship exists between Contractor and the PUCT that interferes with fair competition or is a conflict of interest, and that no existing or contemplated relationship exists between Contractor and another person or organization, whether or not located within the State of Texas, that constitutes or will constitute a conflict of interest for Contractor with respect to the PUCT. For the purposes of this Article 11, a conflict of interest is defined as a situation in which the concerns or aims of the contractor are incompatible with the concerns or aims of the PUCT acting in the public interest.

11.2 **Prohibition on Transactions with Parties Adverse to the PUCT**. Contractor agrees that during the term of this contract and any extensions or renewals thereof, it will undertake the category-based mitigation strategies described in this Section to protect the interests of both parties. Contractor will make a good-faith effort to identify any ERCOT market participants and classify them into categories of potential conflicts as defined in Table 11.2.

Table 11.2

Category	Description
1	Contractor provides services to an entity other than the PUCT relating to Project 52373.
2	Contractor provides analysis, recommendations, or support to an ERCOT market participant relating to ERCOT market participation but not directly connected with the ERCOT wholesale market design.
3	Contractor provides any services to an ERCOT market participant, but not covered by either category 1 or 2. Contractor provides analysis, recommendations, or support to an ERCOT market participant related to wholesale electric markets outside of ERCOT.
4	Contractor provides analysis, recommendations, or support to an ERCOT market participant related to the participant's operation in electric markets outside of ERCOT and unrelated to wholesale electric markets.

1) Category 1:
    a. Contractor will neither provide contractual services nor enter into any agreement, oral or written, to provide services that fall under Category 1 during the duration of this contract without authorization from PUCT staff.

b. Contractor certifies that its prior contracts with NRG and Exelon, which were disclosed in the solicitation process, have been terminated prior to signing this contract.

2) Category 2:
   a. Disclosure requirement: Contractor will disclose to the PUCT any future engagements that fall under Category 2, prior to entering a contract, for the PUCT's evaluation of whether the engagement presents a conflict of interest with regard to the Services provided under this Contract, such approval not to be unreasonably denied or delayed. If no response is provided within five business days, Contractor may presume PUCT does not object to the engagement.
   b. Staff firewall: Contractor will implement an internal firewall for the duration of Contractor's work on this Contract for all engagements falling under Category 2. Category 2 engagements will be performed by staff who are not performing work on this contract and who have no access to the confidential information obtained under this contract, unless otherwise authorized by PUCT. This provision does not apply to: (a) Contractor's partners or directors the extent necessary for Contractor's partners or directors to coordinate the work of the organization and evaluate conflicts, and (b) E3's senior aurora modeling director. Contractor's partners and staff will operate to the highest degree of professional ethics and responsibility.
   c. Market price forecasting service: With respect to Contractor's pre-existing and ongoing market price forecasting services, Contractor certifies that the technical work for its scheduled June 2022 release is substantially complete prior to execution of this contract, and that there would be no opportunity for Contractor's work in providing the Services under this Contract to influence the forecast because the information for the forecast was gathered prior to the initiation of this Contract. Technical work for Contractor's scheduled December 2022 release will begin no sooner than August 2022. Contractor will take any and all necessary steps to ensure that no confidential or non-public information obtained in providing Services under this Contract is used in the preparation of these forecasts, including use of an internal firewall for Contractor staff. Contractor's market price forecasting service will not address any topics under consideration by PUCT with respect to this contract. Contractor will provide PUCT staff with an opportunity to preview its standard market price forecasting package prior to final release to verify that the content does not present a conflict of interest.

3) Category 3:
   a. Disclosure requirement: Contractor will disclose to the PUCT any future engagements that fall under Category 3 at least ten business days prior to contract execution.

4) Category 4:
   a. Disclosure requirement: Contractor will disclose to the PUCT any future engagements that fall under Category 4 not less than monthly.

Contractor agrees to take additional actions to mitigate the potential for any conflict of interest or appearance of conflict related to its performance under this contract:

1) Prohibition on use of confidential data: Contractor will ensure that all confidential or non-public information Contractor obtains from the PUCT, ERCOT, the ERCOT Independent Market Monitor, or ERCOT market participants for the purpose of performing this contract will be kept confidential, in keeping with Exhibit 2. In addition to complying with all requirements in this contract mandating the protection of confidential information, Contractor will not use any Confidential Information or Non-Public information obtained in the process of performing this contract to benefit its other clients regardless of the category of the engagement.
2) Prohibition on marketing activities related to PUCT Contract: Contractor will not mention its scope of work with the PUCT under this contract in any marketing material or use it to promote any potential future Category 2 or Category 3 engagements for the duration of this contract.
3) Monthly disclosures: Contractor will submit a written Conflict of Interest Disclosure to PUCT staff on a monthly basis that lists and describes all Category 1, 2, 3 and 4 projects. PUCT agrees such Disclosure constitutes confidential or trade secret information.
4) Monthly meeting: Contractor will schedule a meeting each month between Contractor and PUCT staff to discuss the information included in the Disclosure and any other issues related to potential conflicts of interest.

11.3 **Notice of Conflict**. Contractor agrees to promptly notify the PUCT of any circumstance that may create a real or perceived conflict of interest, whether arising prior to or during the term of the contract. Contractor agrees to use its best efforts to resolve any real or perceived conflict of interest to the satisfaction of the PUCT. If Contractor fails to do so, it will be grounds for termination of this contract for cause, pursuant to Section 6.2 of this contract. Contractor further agrees to provide an updated version of the conflicts notice provided in its proposal, covering all new engagements arising between submission of the proposal and signature of the contract that would have been required to be included in the conflicts provision of the proposal if they had been entered into prior to submission of the proposal. This updated notice must be provided prior to beginning any Services.

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

Article 12. INDEMNIFICATION

Contractor must indemnify, defend and hold harmless the PUCT, the State of Texas and their officers, agents, employees, representatives, contractors, assignees, and designees from any and all liabilities, claims, suits, assessments, penalties, losses, damages, demands or causes of action, and all related costs, attorney fees and expenses of whatever kind or nature asserted by a third party and occurring in any way incident to, arising out of, or in connection with acts or omissions of Contractor, its agents, employees and subcontractors, committed in the conduct of this contract.

Contractor will have the obligation to undertake the defense of any such claim, process, or legal proceeding at Contractor's expense; provided, however, that the PUCT may participate in the defense with counsel of their own choosing. Any defense must be coordinated by Contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit. Contractor may not agree to any settlement without first obtaining concurrence from the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit. Contractor and the PUCT agree to furnish timely written notice to each other of any claim.

If all or any part of the deliverables of this contract is the subject of any claim, suit, or proceeding for infringement or misappropriation of any intellectual property right, Contractor may, and in the event of any adjudication that the deliverables or any part thereof infringes or misappropriates any patent, trademark, copyright, or trade secret, or if the licensing or use of any of the deliverables or any part thereof is enjoined, Contractor must, at its expense do one of the following things: (i) procure for the PUCT the right under such patent, trademark, copyright or trade secret to fully use the deliverables or the affected part thereof; or (ii) replace the deliverable or affected part thereof with another non-infringing deliverable; or (iii) suitably modify the deliverable or affected part thereof to make it non-infringing.

The terms of this article shall not extend to liabilities, claims, suits, assessments, penalties, losses, damages, demands or causes of action that are the result of the negligence or willful misconduct of the indemnified parties.

Article 13. INSURANCE

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

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

a) commercial liability insurance, covering, at a minimum, the following categories of liability within the following limits: (i) bodily injury and property damage - $1,000,000 limit per occurrence, $2,000,000 aggregate, (ii) medical expense - $5,000 limit per person, (iii) personal injury and advertising liability - $1,000,000 limit, (iv) products or completed operations – $2,000,000 aggregate, (v) damage to premises rented - $50,000 limit;

b) automobile liability coverage for vehicles driven by Contractor's employees ($500,000 per occurrence);

c) workers' compensation insurance in accordance with the statutory limits, as follows: (i) employer's liability - $1,000,000 each incident, (ii) disease - $1,000,000 each employee and $1,000,000 policy limit;

d) cyber incident coverage to include: privacy breach related legal expenses to review and determine responsibilities under privacy breach laws; expenses related to compliance with privacy law notification requirements; credit and identification monitoring for up to 12 months after a cyber incident; expenses related to forensic investigations to investigate a system intrusion into the Contractor's computer system; and expenses to hire a public relations firm for public communications response; and

e) a fidelity bond or crime policy in the amount of $1,000,000 with third party coverage for the PUCT for Contractor's employees working proprietary information, or Confidential Information.

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

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

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

Article 14. DISPUTE RESOLUTION

The Parties agree to resolve disputes arising under this contract through the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and Subchapter C of the PUCT Rules for Administrative Services.

Article 15. SOVEREIGN IMMUNITY

The State of Texas and the PUCT do not waive sovereign immunity by entering into this contract and specifically retain immunity and all defenses available to them under the Constitution, the laws of the State of Texas, or the common law.

Article 16. GOVERNING LAW

Notwithstanding anything to the contrary in this contract, this contract will be deemed entered into in the State of Texas and will be governed by, construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. The Parties consent to the exclusive jurisdiction of the State of Texas. The Parties hereby submit to the jurisdiction of the courts located in, and venue is hereby stipulated to, the state courts located in Travis County, Texas. Each Party stipulates that it is subject to the jurisdiction of the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this contract. Further, each Party hereby waives any right to assert any defense to jurisdiction being

held by the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this contract.

Article 17. COMPLIANCE WITH LAW

17.1 **General**. Contractor must comply with all federal, state, and local laws, executive orders, regulations, and rules applicable at the time of performance. Contractor warrants that all Services sold hereunder will have been produced, sold, delivered, and furnished in strict compliance with all applicable laws and regulations to which they are subject, including, but not limited to, Equal Employment Opportunity laws. All laws and regulations required in agreements of this character are hereby incorporated by this reference.

17.2 **Taxes**. Contractor agrees to comply with any and all applicable state tax laws that may require any filing with or payment to the State of Texas as a result of any action taken as a result of this contract.

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

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

17.5 **Compliance with Deceptive Trade Practices Act**. Contractor must comply with Texas Business and Commerce Code Chapter 17.

17.6 **Compliance with Americans with Disabilities Act**. Contractor must comply with the Americans with Disabilities Act, 42 U.S.C. Chapter 126.

17.7 **Prohibited Use of Appropriated or Other Funds**. Contractor must comply with Texas Government Code Sections 556.005 and 556.0055 related to prohibited uses of appropriated and other funds.

17.8 **Certificate of Interested Parties Form**. At the time Contractor submits a signed contract to the PUCT, Contractor must submit a "Certificate of Interested Parties" form to the PUCT and file the form with the Texas Ethics Commission. The form and instructions for filing the form can be found at: https://www.ethics.state.tx.us/tec/1295-Info.htm. Contractor must not perform any work under the contract, nor receive any compensation prior to filing the form with the Texas Ethics Commission.

Article 18. CONTRACTOR'S CERTIFICATION

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

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

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

18.3 **Terrorist Financing**. The PUCT is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it, via cross referencing proposers or vendors with the Federal General Services Administration's System for Award Management (SAM), https://www.sam.gov/, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx

Contractor certifies that the Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at: https://www.sam.gov/

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

18.4 **Antitrust**. Neither Contractor nor anyone acting for Contractor has violated the antitrust laws of this state, codified in Section 15.01, et seq. of the Texas Business and Commerce Code or the Federal Antitrust Laws, nor has communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage.

18.5 **Family Code**. Contractor has no principal who is ineligible to receive funds under Texas Family Code Section 231.006 and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

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

18.7 **Government Code**. Under Texas Government Code Section 2155.004, Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified

contract and acknowledges that this contract may be terminated or payment may be withheld if this certification is inaccurate.

18.8 **Outstanding Obligations**. Payments due under the contract will be applied towards any debt that is owed to the State of Texas, including but not limited to delinquent taxes and child support.

18.9 **Contracting with Executive Head of State Agency**. Contractor certifies this contract is in compliance with Texas Government Code Section 669.003 relating to contracting with the executive head of a State agency. If Texas Government Code Section 669.003 applies, bidder will provide the following information in order for the bid to be evaluated: Name of Former Executive; Name of State Agency; Date of Separation from State Agency; Position with Bidder; and Date of Employment with Bidder.

18.10 **Buy Texas**. Contractor will comply with Texas Government Code Section 2155.4441, pertaining to service contracts regarding the use of products produced in the state of Texas.

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

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

1. All persons hired to perform duties within Texas, during the term of the contract; and

2. All persons (including subcontractors) hired by the proposer to perform work pursuant to the contract, within the United States of America.

The Contractor must provide, upon request of PUCT, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor will also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated contract.

This term should not be construed to require Contractor to utilize E-Verify to determine the eligibility of existing employees, or otherwise use E-Verify in violation of the law.

18.13 **Debarred Vendors List**. Contractor certifies that it is not on the Debarred Vendors List located at http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/.

18.14 **Does Not Boycott Israel**. If Contractor is required to make a certification pursuant to Texas Government Code Section 2270.002, Contractor certifies that Contractor does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If

Contractor does not make that certification, Contractor certifies that it provided a statement to the PUCT, prior to signing this contract, stating why the certification is not required. Contractor further certifies that no subcontractor of Contractor who is required to make a certification pursuant to Texas Government Code Section 2270.002 boycotts Israel or will boycott Israel during the term of this contract.

18.15 **Does Not Discriminate Against Firearm and Ammunition Industries.** If Contractor is prohibited from discriminating against firearm and ammunition industries under Texas Government Code Chapter 2274, Contractor certifies that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

Article 19. GENERAL PROVISIONS

19.1 **Relationship of Parties**. Contractor is and will remain at all times an independent contractor, and nothing in this contract will be deemed to create a joint venture, partnership, employment, franchise, or master-servant relationship between the Parties. Notwithstanding anything to the contrary, the Parties will have principal-agent relationships as described in the Statement of Work. Except as expressly provided to the contrary elsewhere in this contract, no Party has any right or authority to act on behalf of another Party, nor to assume or create any obligation, liability or responsibility on behalf of another Party. Under no circumstances will the relationship of employer and employee be deemed to arise between the PUCT and Contractor's personnel. Contractor will be solely responsible for achieving the results contemplated by this contract, whether performed by Contractor, its agents, employees or subcontractors.

19.2 **Non-Exclusivity**. Nothing in this contract is intended nor will be construed as creating any exclusive arrangement between Contractor and PUCT. This contract will not restrict from acquiring any similar, equal, or like goods or services from other entities or sources.

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

employee stock option or stock purchase plans. Contractor hereby waives any and all rights to any such PUCT employment benefit.

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

IF TO THE PUCT:

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

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

IF TO CONTRACTOR:

ATTENTION: Zachary Ming
44 Montgomery St. Suite 1500
San Francisco, CA 94104

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

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

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

19.8 **Specific Personnel**. Contractor has identified the personnel for this assignment ("Team"), as described in its proposal.

Contractor warrants that it will use its best efforts to avoid any changes to the Team during the course of this Contract. Should personnel changes occur during the term of this Contract or any extensions or renewals thereof, Contractor will recommend to the PUCT personnel with comparable experience and required qualifications and training. The PUCT must approve any change in personnel on this project in writing. Contractor must provide individuals qualified to perform the tasks assigned to such individual. At the PUCT's request, Contractor must remove from the project any individual whom the PUCT finds unacceptable for any reason in the PUCT's sole discretion. Contractor must replace such individual with another individual satisfactory to the PUCT as soon as practicable.

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

19.10 **Publicity**. Contractor understands and agrees that the PUCT do not endorse any vendor, commodity, or service. Contractor understands and agrees that Contractor, its employees, representatives, other agents, or subcontractors may not issue any public disclosure, media release, advertisement, or publication without prior written approval of the PUCT: which pertains to this contract or any services or project to which this contract relates; or which pertains to any results or findings based on information provided, created, or obtained to fulfill the requirements of this contract; or which mentions the PUCT.

19.11 **No Third Party Beneficiaries**. Nothing contained in the contract, either express or implied, is intended to confer on any person other than the Parties, or their respective permitted successors, assigns, or transferees any interests, rights, remedies, obligations or liabilities.

19.12 **Prompt Payment**. All payments to Contractor, any payments by Contractor to any subcontractor, and any payments by a subcontractor to any other person or entity that provides goods or services under this contract must be made in compliance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act

Article 20. NO IMPLIED WAIVER

The failure of any party, at any time, to enforce a provision of this contract will not constitute a waiver of that provision; will not affect the validity of this contract or any part of it; and will not affect the right of any party to enforce each and every provision.

Article 21. ORDER OF PRECEDENCE

In the event of conflicts or inconsistencies between the provisions of this contract and any attachments or exhibits, the following are given preference in the order listed below:

1) The terms and conditions of this contract;

2) The Statement of Work;

3) The Request for Proposals;

4) The ERCOT Supplemental Terms and Conditions;

5) The Contractor's proposal.

Article 22. FORCE MAJEURE

Neither the PUCT nor Contractor will be considered in default in the performance of its obligations under this contract to the extent that the performance of such obligations is prevented or delayed by any cause beyond the reasonable control of the affected party, which such party could not, by due diligence have avoided, including but not limited to acts of God, severe weather, explosions, riots, acts of war, or orders of legal authority. Such causes will not relieve either party of liability in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner, with all reasonable dispatch, and to give notice and full particulars of the same in writing to the other party as soon as possible after the occurrence of the cause that prevented or delayed performance of the obligations. If the event of Force Majeure continues for a period of more than one hundred and eighty (180) days, either party thereafter may terminate this contract upon giving at least ten (10) days prior written notice to the other party. The COVID-19 pandemic is a known circumstance at the time this contract is being entered into, so the parties agree it will not be considered a "Force Majeure" event preventing performance of this contract.

Article 23. SEVERABILITY

If any provision of this contract is held unlawful or otherwise unenforceable, that provision will be severed and deemed deleted and the remainder of this contract will continue in full force and effect, as if the provision had never existed.

Article 24. FUNDING OUT CLAUSE

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations, provisions of Section 6.3 of this contract will apply. Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature. See Texas Constitution, Article III Section 49, State Debts; and Texas General Appropriations Act for the 2020-2021 Biennium, Article IX, Section 6.03, Excess Obligations Prohibited.

Article 25. DRUG FREE WORKPLACE POLICY

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

Article 26. SUBSTITUTIONS

Substitutions are not permitted without written approval of the PUCT.

Article 27. RIGHT TO AUDIT

Pursuant to Section 2262.154 of the Texas Government Code, the State Auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state directly under this Contract or indirectly through a subcontract under this contract. The acceptance

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

Article 28. SIGNATORIES

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

Article 29. ENTIRE AGREEMENT

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

In WITNESS WHEREOF both parties by their duly authorized representatives have executed this contract effective as of the date signed by the second party to sign.

The Public Utility Commission of Texas

By:

Thomas J. Gleeson

Executive Director

Date Signed: 5/10/22

Contractor

By:

Name Arne Olson

Title Senior Partner

Date Signed: May 10, 2022

Exhibit 1 – Statement of Work

Introduction

Contractor will serve as an independent consultant to assist in the analysis, development and implementation of certain market design and market structure mechanisms in the Electric Reliability Council of Texas (ERCOT) wholesale market. The Commission has adopted a Market Design "Blueprint" with Phase I and Phase II market design and structure reforms that are intended to ensure sufficient dispatchable generation resources in the ERCOT wholesale market to meet the reliability needs of the ERCOT power region during a range of extreme weather conditions and net load variability scenarios. Contractor must recommend implementation strategies and support the Commission and PUCT staff in the development of business requirements for those strategies.

The Blueprint can be found at:
http://interchange.puc.texas.gov/Documents/52373_336_1180125.PDF.

Contractor must review various proposals from market participants and commissioners; analyze and advise PUCT staff and the Commission on appropriate reliability standards and metrics to achieve a certain level of dispatchable generation with the Blueprint's market reforms; provide estimated implementation and consumer cost analysis associated with the Blueprint's market reforms; provide potential dispatchable generation investment outcomes associated with the Blueprint's market reforms; and provide reliability impact analysis associated with the Blueprint's market reforms.

Senate Bill 3 (SB 3), the 87th regular legislative session, amended the Public Utility Regulatory Act §§ 39.159 and 39.160 to require the PUCT to ensure the ERCOT power region's generation fleet contains sufficient dispatchable generation resources to meet the reliability needs of the ERCOT power region. *See*
https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=87R&Bill=SB3.

SB 3 requires the PUCT to ensure that ERCOT: (1) establishes a reliability standard to meet the needs of the power region; (2) annually assesses the quantity and characteristics of the reliability services needed to meet the needs of the power region under extreme weather conditions; (3) procures sufficient ancillary or reliability services during times of low non-dispatchable power production; (4) develops qualifications and performance requirements for providing these reliability services, including appropriate penalties for failure to provide the services; and (5) sizes the services procured to prevent prolonged rotating outages due to net load variability in high demand and low supply scenarios.

The PUCT has conducted extensive market design work sessions that have resulted in the adoption of the Blueprint, which is divided into Phase I and Phase II market design and structure reforms. The Commission has directed the implementation of the Phase I market design reforms. Phase II of the Commission's Blueprint is an agreed set of principles for market design and structure reforms.

Contractor must assist the PUCT in the development of the Phase II market design and structure reforms to comply with the statutory requirements set forth in SB 3 as stated above. The contractor must evaluate original, modified, and hybrid versions of the market design and structure mechanisms described in the Commission's Blueprint using cost causation principles, in addition to the principles and framework that the Commission has set forth in its Blueprint and as described in this Statement of Work. The contractor may also be directed by the PUCT Contract Administrator to evaluate other proposed market design and structure mechanisms filed in Project 52373.

Phase II market design and structure mechanisms include:

Load-Side Reliability Mechanism (LSRM) – The Commission has directed the development of a load-side market-based mechanism intended to ensure sufficient dispatchable generation in the ERCOT fleet, able to meet a range of weather and demand scenarios, and to further stimulate investment in dispatchable generation in the ERCOT market. A range of load-side market-based mechanisms are to be considered, from a Load Serving Entity Obligation to a Dispatchable Portfolio Standard and associated credits that Load Serving Entities (LSE) would procure, and other mechanisms or requirements for LSEs to prove their ability to meet load obligations. The proposals to be considered should place a requirement on LSEs to either purchase an energy credit, a type and quantity of energy resources, or prove its ability to meet the demand of the customers that it has contracted to serve. Contractor must analyze both the cost to the ERCOT market and the financial impact to consumers of up to five specific proposals. The analysis must also include expected reliability outcome and future investment in dispatchable generation resources.

Backstop Reliability Service (BRS) – The Commission has directed the development of a reliability service that will identify and meet specific reliability needs that will not be met by ERCOT's real-time and ancillary services market. The BRS will be used to procure accredited new and existing dispatchable generation resources to serve as an insurance policy to help prevent energy emergency conditions in the ERCOT power region. The BRS will include new and existing accredited dispatchable generation resources that are seasonally-tested and able to meet specified start-time and duration requirements. The BRS is intended to provide a forward price signal to dispatchable generation resources that does not negatively impact real-time energy prices and incents investment in new dispatchable generation in the ERCOT power region. The contractor must be prepared to analyze quantity and sizing options; eligibility characteristics; deployment, payment, and penalty options; verification/accreditation options; and other parameters as necessary within the framework of the Commission's stated principles. The contractor will also evaluate and analyze potential implementation and consumer cost impacts, potential dispatchable generation investment outcomes, and reliability outcomes that will result from the implementation of BRS in the ERCOT power region.

Tasks

I. Design a turnkey Load-Side Reliability Mechanism for the Commission's approval that can be fully operational and functioning in the ERCOT power region within one year of Commission adoption. A Load-Side Reliability Mechanism should:

A. Offer economic rewards and provide robust penalties or alternative compliance payments based on a resource' s ability to meet established standards (including penalty at cost of new entry for both non-compliance of load and non-performance of generation).

B. Build on ERCOT's existing Renewable Energy Credit (REC) trading program framework or other existing framework to the extent practicable.

C. Be self-correcting (in a properly functioning market, higher energy prices will incentivize new supply and over time that additional supply will drive energy prices back down to market equilibrium).

D. Have clear performance standards (incentivize higher performance).

E. Sizing of the program must be dynamic (e.g., peak net load).

F. Provide a forward price signal to encourage investment in dispatchable generation resources.

G. Value or qualify resources based on capability.

H. Establish standards that can be regularly tested or certified upon the start of commercial operation.

I. Be proportional to the system need, with dynamic pricing and sizing to ensure reliability needs are met without over-purchasing reserves.

J. Be compatible with ERCOT's robust competitive retail electricity market that provides choice for consumers.

K. Ensure market power concerns are mitigated, especially regarding electric generation companies that also serve retail customers, so that competition and innovation will continue to thrive in the ERCOT market.

II. Design a turnkey Backstop Reliability Service that Mechanism that can be fully operational and functioning in the ERCOT power region by Summer 2023. The Backstop Reliability Service should:

A. Be sized on a dynamic, flexible basis to meet a specific reliability need (i.e., seasonal net load variability, low-probability/high-impact scenarios).

B. Include new and existing accredited dispatchable generation resources that are seasonally tested and able to meet specific minimum and maximum start-time and duration requirements.

C. Include robust non-performance penalties and clawback of payment for noncompliance.

D. Deploy generation resources in a manner that does not negatively impact real-time energy prices (i.e., the deployed generation resources will truly serve as a backstop).

E. Provide a forward price signal through an annual procurement on a seasonal basis to encourage investment in dispatchable generation resources.

F. Include cost allocation to load based on a load ratio share basis that is measured on a coincident net-peak interval basis.

G. Be developed through a framework that would allow maximum expedited implementation by ERCOT.

H. Be analyzed in conjunction with other long-term market design enhancements

III. Analyze whether a hybrid of a BRS and LSRM could be created to enhance grid reliability.

IV. For each market design and structure mechanism, provide:

A. Business requirements and specifications for implementation in the ERCOT wholesale market.

B. Policy decisions, with pros and cons, to be addressed by the Commission.

C. A list of ERCOT Protocols and Commission rules that would need to be revised.

D. A cost/benefit analysis that addresses:

i. Expected reliability outcomes.

ii. Implementation and consumer cost impacts in ERCOT's competitive retail market.

iii. Potential impacts on future monetary investment in dispatchable generation.

V. Additional expectations.

A. The Contractor will be expected to review the Commission's Blueprint (http://interchange.puc.texas.gov/Documents/52373_336_1180125.PDF) for Phase I and Phase II of the market design and structure reforms and assist PUCT staff and the Commission with the evaluation of the Phase I and II market design and structure mechanisms for implementation of both phases.

B. The Contractor will be expected to maintain independence from ERCOT and other interested parties and conduct its work in an unbiased and impartial manner. The Contractor reports only to the PUCT with regard to its work under this contract.

C. The Contractor must appropriately handle sensitive information. The Contractor must cooperate with reasonable requests of ERCOT regarding access to sensitive

information. ERCOT has established procedures for access to sensitive information, including agreements to ensure confidentiality and prevent accidental disclosure or risk of access by bad actors. To the extent possible, and assuming that it does not prevent the Contractor from performing its other duties under this contract, Contractor must cooperate with ERCOT's procedural requirements for access. If there is a conflict between the duties of this contract and ERCOT's requirements for access, the Contractor must inform the PUCT contract administrator, who will assist in resolving the conflict. Exhibit 2 to this contract is an agreement with ERCOT for access to facilities and information. The PUCT does not expect Contractor to obtain the background checks required for access to ERCOT systems or unescorted physical access to ERCOT facilities unless and until it is determined that Contractor's personnel need that access to perform their duties under this contract.

D. The Contractor will be required to communicate individually with each commissioner on certain matters under this contract. The Contractor must be aware of and comply with the requirements of the Open Meetings Act with regard to these communications.

VI. Deliverables:

A. Biweekly meetings with the PUCT contract administrator and PUCT Staff, with a written summary update beginning 30 days after the contract is executed.
B. A draft Final Report is due to the contract administrator 90 days after the contract is executed with the option to extend the deadline if approved by the contract administrator.
C. Conduct an interview with each commissioner to ascertain policy objectives and priorities at each of the following milestones: upon contract execution, following submission the draft Final Report, and prior to submission of the Final Report.
D. Gather input from PUCT Staff and ERCOT to inform the Contractor's evaluation of the market design and structure reforms and propose modifications to the market design and structure reforms, as necessary, to address the feedback.
E. Work with ERCOT to identify and evaluate how the market design and structure reforms can most efficiently be implemented consistent with the principles set forth in the Blueprint.
F. Further analyze and propose modifications to market design and structure reforms resulting from Commission input.
G. Participate in public meetings held at the PUCT to introduce recommendations on the market design and structure reforms to stakeholders and the public.
H. Submit a Final Report to the PUCT that includes the final framework for the market design and structure reforms.
I. Work with ERCOT to draft Nodal Protocol Revision Requests that are necessary to implement the market design and structure reforms approved by the Commission.

VII. PUCT Staff and ERCOT will provide other support and cooperation, as necessary, for the Contractor to perform its functions, including all support and cooperation that is determined appropriate by the PUCT.

Exhibit 2 –Supplemental Terms and Conditions

1. BACKGROUND INVESTIGATION AND CONDUCT

1.1 Background Investigation

A. Contractor will ensure that all individuals performing Services on behalf of Contractor under this Agreement ("Individuals" or, singularly, an "Individual") are legally authorized to perform the Services in the United States and Texas, and that the education and background on resumes submitted to ERCOT for Individuals are accurate.

B. Prior to any Individual having unescorted physical access to ERCOT's facilities, or electronic access to ERCOT computers or information systems ("Access Privileges"), such Individual must successfully pass a background investigation, including:

1. a criminal background check for the previous seven (7) years in each county, state, and country in which the Individual has worked, lived, or attended school showing no felonies and no misdemeanors except those misdemeanors that ERCOT accepts in writing, using a reputable vendor of consumer report services;
2. verification of the Individual's identity and confirming each Individual's social security number by (a) a reputable vendor of consumer report services, (b) receipt of a properly-completed Form I-9, or (c) other reliable process acceptable to ERCOT; and
3. a clean, supervised drug screen to detect cocaine, amphetamines, opiates, phencyclidine, and marijuana, administered by a reputable medical office or drug testing service.

C. For each Individual for whom Contractor requests Access Privileges, Contractor must:

1. arrange and pay for the above background investigation; and
2. provide written confirmation to ERCOT that the Individual has successfully passed the requisite background investigation.
3. ensure compliance with all procedural requirements of the Fair Credit Reporting Act, including but not limited to providing notification and securing authorization allowing ERCOT to receive the results of background checks, both to ensure eligibility for assignment to perform Services to ERCOT and for ERCOT to use as evidence of performance of the background investigations in the event of an audit by ERCOT or its regulators; and
4. maintain and allow ERCOT or its authorized representative access to audit Contractor's records relating to the background investigation of any Individual for a period of three (3) years after the End Date of the applicable SOW.

D. All information regarding an Individual obtained during the background check and drug screen will be kept confidential by ERCOT to the extent allowed by law.

1.2 Conduct

A. Contractor agrees that it and all Individuals will abide by ERCOT's Code of Conduct and Ethics Corporate Standard ("Code of Conduct") and all other policies and procedures applicable to ERCOT independent contractors while performing Services for ERCOT, on ERCOT premises, or using ERCOT equipment or networks.

B. Further, all Individuals requiring Access Privileges must participate in any access-related training required by ERCOT and execute the then-current Consultant Ethics Agreement (the "Ethics Agreement") acknowledging and agreeing to be bound by

ERCOT's Code of Conduct and Information Protection Corporate Standard prior to being granted Access Privileges or beginning Services for ERCOT. All Individuals will execute such updated agreements as are reasonably requested by ERCOT.

C. The form of the current required Ethics Agreement and Code of Conduct may be found at www.ercot.com.

D. Contractor agrees that it will abide by ERCOT's Information Governance Corporate Standard and associated operating procedures, including those regarding legal holds and retention/disposition.

E. Contractor acknowledges that the following items are subject to inspection by ERCOT personnel at any time with or without notice:

1. any e-mail, voicemail, or computer usage by any Individual using ERCOT computer, network, or electronic equipment; and
2. any tangible item situated on ERCOT's premises (including filing cabinets, desks, or other work areas).

F. On-site Safety

1. Contractor is responsible for complying with all ERCOT safety precautions and programs in connection with the Services provided.
2. Contractor will take all necessary precautions and provide all necessary protection from damage, injury, or loss to persons or property in providing the Services.
3. Contractor is liable for all damage or loss to any person or property to the extent caused by Contractor or an Individual.

2. CONFIDENTIALITY

2.1 Exchange of Confidential Information

For the purposes of this Agreement, the Parties will be exchanging certain Confidential Information, as defined in Section 2.2.A below (i.e., the "Disclosing Party" provides Confidential Information to the "Receiving Party"). Notwithstanding anything herein to the contrary, this confidentiality provision remains subject to the terms of Article 10

(Public Information), of Contract No. 473-19-00007 among Contractor, the PUCT, and ERCOT.

2.2 Confidential Information

A. "Confidential Information" is information that by its nature or purpose would reasonably be considered by a person to be confidential, proprietary, or trade secret information and specifically includes, but is not limited to, anything designated as Protected Information or ERCOT Critical Energy Infrastructure Information under the ERCOT Protocols. Confidential Information also includes all information, technical data, and know-how that relates to the business, services, or products of Disclosing Party, or Disclosing Party's Market Participants (as defined below), customers, or other vendors, including without limitation, any research, products, services, developments, inventions, processes, techniques, designs, and scientific, technical, engineering, distribution, marketing, financial, merchandising, pricing, and sales information that is disclosed to Receiving Party directly or indirectly in writing, electronically, orally, by drawings, or through inspection. A "Market Participant" is an entity other than ERCOT that engages in any activity that is in whole or in part the subject of the ERCOT Nodal Protocols, regardless of whether it has signed an agreement with ERCOT, as further described in the ERCOT Nodal Protocols, which may be found on ERCOT's website at www.ercot.com.

B. The Parties agree that all materials and information exchanged in connection with the performance of Services under this Agreement are considered Confidential Information.

C. Confidential Information does <u>not</u> include information, technical data, or know-how that:

1. is already published or available to the public, or subsequently becomes available, other than by a breach of this Agreement;
2. is received from a third party without Receiving Party's knowledge of any obligation of confidentiality;
3. is independently developed by personnel or agents of Receiving Party without reliance on the Confidential Information; or
4. is proven by written evidence to be known to Receiving Party at the time of disclosure.

2.3 Precautions Taken to Protect Confidential Information

A. Receiving Party agrees not to disclose or use the Confidential Information for any purposes other than those under this Agreement.

B. Receiving Party will ensure policies and procedures are in place to securely maintain Confidential Information at all times and to reasonably restrict distribution to employees, representatives, or agents of Receiving Party necessary to perform a purpose permitted under this Agreement.

C. Confidential Information and all copies are and will remain the property of Disclosing Party.

D. Except as to Confidential Information that also makes up a part of prior works or Confidential Information that constitutes a "state record," as defined by Texas Government Code § 441.180(11) and must be retained by the PUCT in accordance with a records management program established under Texas Government Code § 441.183, upon request of Disclosing Party or immediately upon termination of this Agreement, Receiving Party will promptly return to Disclosing Party all Confidential Information via bonded courier or some other similarly secure means agreed upon in advance, or destroy all Confidential Information using a destruction method that ensures such data is unrecoverable and providing documentation to Disclosing Party detailing the destruction method and process used, provided that each Party may keep a copy of this Agreement.

E. Receiving Party agrees to immediately notify Disclosing Party upon discovery of any unauthorized use or disclosure of Confidential Information, and to cooperate in any reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent further unauthorized use or disclosure.

F. If Receiving Party is required by an order, rule, or law of any federal, state, local, or municipal body having jurisdiction over a Party to disclose any Confidential Information, Receiving Party will provide Disclosing Party notice, to the extent reasonably possible, of such requirements so that Disclosing Party may seek, at Disclosing Party's expense, to limit production. If Receiving Party remains legally compelled to make such disclosure, it will: (i) only disclose that portion of the Confidential Information that it is required to disclose; and (ii) use reasonable efforts to ensure that such Confidential Information is afforded confidential treatment.

2.4 Loopholes

A. Contractor recognizes that by performing Services under this Agreement, Contractor may become aware of methods by which Market Participants could manipulate or "game" the ERCOT system ("Loopholes") and thereby take unethical advantage of the ERCOT system.

B. Contractor agrees that to the extent Contractor becomes aware of such information, it will promptly notify a member of ERCOT management of the existence of such Loopholes and that it will treat such information as Confidential Information.

2.5 Notwithstanding anything to the contrary in this Agreement, no Individual or Party will be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (A) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (B) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An Individual who files a lawsuit for retaliation by a Party for reporting a suspected violation of law may disclose the trade secret to his or her attorney and use the trade

secret information in the court proceeding, if the Individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

3. CYBER SECURITY

3.1 Prior to performing Services, Contractor will provide summary documentation of its cyber security program, including the standards, practices, training programs, and development environment used to create or modify any deliverables or software used to perform the services. If applicable, Contractor will document how it addresses and prevents introduction of malicious code during development and delivery of software used to perform the services. If applicable, Contractor will document how the most critical application security weaknesses are being addressed.

3.2 During or after performance of services, and upon Contractor identifying any known vulnerabilities or breaches of system security, Contractor will notify ERCOT (1) within 24 hours of such breaches involving services, deliverables, and/or software on ERCOT's systems or (2) within three (3) calendar days of any other breaches of Contractor's system security. Within seven (7) calendar days of any such breach, Contractor will provide follow-up documentation to ERCOT that will include a description of the breach, potential security impact, root cause, and recommended corrective actions to be taken by ERCOT and Contractor. Contractor will continue to report to ERCOT on a schedule approved by ERCOT until a root cause analysis and forensic investigation to determine the full impact have been completed or exhausted.

3.3 Contractor will notify ERCOT immediately upon resignation, termination, or reassignment of any Individuals requiring Access Privileges.

3.4 Contractor will transfer any deliverables only through secure channels approved in advance by ERCOT and the PUCT. ERCOT may require Contractor to specify how digital delivery will be validated and monitored to ensure integrity and authenticity of software and patches, and to apply encryption throughout the delivery process.

3.5 All Contractor access, including Contractor-initiated remote access and automated system-to-system access, will occur only through ERCOT's security gateways and firewalls, and will adhere to ERCOT security procedures.