

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (as may be amended, modified, or supplemented in writing from time to time, this “Agreement”), is made and entered into as of the ___ day of _____, 2025, by and between **THE CITY OF TEXAS CITY, TEXAS**, a municipal corporation and home-rule city of the State of Texas (the “City”), and **TEXAS-NEW MEXICO POWER COMPANY**, a corporation existing under the laws of the State of Texas (together with its successors and/or assigns, the “Utility”).

Article I RECITALS

I.01. Utility owns an approximately 6.01-acre tract of real property located in Galveston County, Texas, more fully described on Exhibit “A” attached hereto and incorporated herein (the “Property”).

I.02. Utility intends to construct an electric substation to serve growing electric load in the City and install a pumped detention stormwater management system (the “Pumped Detention System”) in the cross-hatched area of the Property depicted on Exhibit “B” attached hereto and incorporated herein by reference.

I.03. The City has agreed to allow Utility to install the Pumped Detention System subject to the terms and conditions of this Agreement. The City has determined that agreeing to the terms set forth in this Agreement will benefit the City and the City’s inhabitants, and will promote local economic development and stimulate business in the City.

I.04. The terms “City”, “Utility”, and “Property” shall have the meanings provided for them in the Recitals herein above.

Article II AGREEMENT; UTILITY’S OBLIGATIONS

NOW, THEREFORE, for good and valuable consideration and the mutual covenants set forth herein, Utility and the City contract and hereby agree as follows:

II.01. Installation, Ownership and Maintenance of Pumped Detention System. The City hereby grants Utility the right to install the Pumped Detention System, at Utility’s sole cost and expense, in accordance with the terms and conditions of this Agreement. Utility acknowledges and agrees that the Pumped Detention System will be owned and maintained by Utility (including any of its successors and/or assigns) and the City shall never have the responsibility to own, operate or maintain the Pumped Detention System. For so long as this Agreement is in place and Utility (including any of its successors and/or assigns) owns the Property, Utility shall, at Utility’s sole cost and expense, maintain the Pumped Detention System in good working order and at design capacity.

II.02. Correction of Operational or Performance Issues. Utility covenants and agrees that, upon ten (10) days’ written notice from the City (a “Notice”), Utility shall correct any operational or performance issue(s) in connection with the Pumped Detention System as specifically identified by the City in the Notice. If, after ten (10) days from the date that Utility receives the Notice, Utility has failed to correct the operational or performance issue(s) identified in the Notice (or such longer period of time if such issue(s) cannot be corrected within such 10-day period), then the City may correct (or cause the correction of) such issue(s) at Utility’s sole cost and expense. Any costs and expenses incurred by the City (after the expiration of all applicable notice and cure periods) to correct any operational or performance issue(s) in connection

with the Pumped Detention System shall be reimbursed by Utility within thirty (30) days of Utility's receipt of a paid itemized invoice from the City.

II.03. Notice. Utility agrees to provide notice to the Mayor or his or her designee of any material proposed material changes to the Pumped Detention System prior to taking any action in connection with such changes.

Article III OBLIGATIONS OF THE CITY

Upon adoption of this Agreement, the City does hereby approve Utility's installation of the Pumped Detention System, notwithstanding any applicable zoning and/or building codes or ordinances to the contrary.

Article IV TERM AND DEFAULT

IV.01. Term. This Agreement shall be in effect as of the date set forth on the first page hereof and shall terminate fifty (50) years thereafter, unless terminated earlier as specifically provided herein.

IV.02. Default.

a. A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

b. Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged of the failure and shall demand performance. No breach of the Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of such the breaching party's receipt of such notice. Upon a breach of this Agreement, the non-defaulting party shall be entitled to specific performance.

Regardless of any other provision, neither party to this Agreement shall be entitled to recover money damages for breach of this Agreement or a tort related to this Agreement. Except as otherwise set forth herein, no action taken by a party pursuant to the provisions of this Section 4.02 or pursuant to the provisions of any other section of this Agreement shall be deemed to constitute an election of remedies. All remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any party or in equity. Each of the parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other party.

Article V MISCELLANEOUS PROVISIONS

V. Miscellaneous.

V.1 *Approvals and consents*. Approvals or consents required or permitted to be given under this Agreement shall be evidenced by an ordinance, resolution or order adopted by the governing body of the appropriate party or by a certificate executed by a person, firm or entity previously authorized to give such approval or consent on behalf of the party. Approvals and consents shall be effective without regard to whether given before or after the time required for giving such approvals or consents,

V.2 *Address and notice.* Any notice to be given under this Agreement shall be given in writing, addressed to the party to be notified as set forth below, and may be given either by depositing the notice in the United States mail postage prepaid, registered or certified mail, with return receipt requested; by messenger delivery; or by email. Any notice deposited by mail shall be effective upon actual receipt or refusal of delivery. Notice given in any other manner shall be effective upon receipt by the party to be notified. For purposes of notice, the addresses of the parties shall be as follows:

If to the City, to:

City Engineer — City of Texas City
7800 Emmett F. Lowery Expressway
Texas City, Texas 77591
Attn: Kim Golden
Email: _____

With a copy to:

City Attorney — City of Texas City
1801 9th Ave. N.
Texas City, Texas 77590
Attn: Kyle Dickson
Email: _____

If to the Utility, to:

TNMP Director of System Engineering and Land Services
702 36th Street North
Texas City, TX 77590
Attn: Director of System Engineering and Land Services
Email: engineeringdirector@txnmenergy.com

With a copy to:

TNMP Legal_
577 N Garden Ridge Blvd
Lewisville, TX 75067
Attn: TNMP Legal
Email: Legal@tnmp.com

The parties shall have the right from time to time to change their respective addressees by giving at least 10 days' written notice of such change to the other party.

V.3 *Assignment; Memorandum of Agreement.* This Agreement is assignable only with prior written consent by the City. If all or any portion of the Property is transferred, sold or conveyed, Utility shall give notice immediately to the City of the name, address, phone number and contact person of the person or entity acquiring an interest in the Property, This Agreement shall run with the land and shall be binding on and inure to the benefit of the Utility's successors and assigns. Within thirty (30) days of the full execution and delivery of this Agreement, Utility shall record, at Utility's sole cost and expense, a memorandum of this Agreement against the Property.

V.4 *Nonwaiver of Rights.* By entering this Agreement, neither Utility nor the City waive any rights granted under any laws, nor do they make any admissions regarding the subject matter of this Agreement. Each party specifically reserves any and all rights to pursue any action or remedy to protect its interests and rights under this Agreement.

V.5 *Reservation of Rights.* All rights, powers, privileges and authority of the parties hereto not restricted or affected by the express terms and provisions hereof are reserved by the parties and, from time to time, may be exercised and enforced by the parties.

V.6 *Venue.* This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Galveston County, Texas.

V.7 *Merger.* This Agreement embodies the entire understanding between the parties regarding the Pumped Detention System and there are no representations, warranties, or agreements between the parties covering the subject matter of this Agreement.

V.8 *Modification; Exhibit.* This Agreement shall be subject to change or modification only with the mutual written consent of the City and Utility. The exhibits attached to this Agreement are incorporated by this reference for all purposes.

V.9 *Captions.* The captions of each section of this Agreement are inserted solely for convenience and shall never be given effect in construing the duties, obligations or liabilities of the parties hereto or any provisions hereof, or in ascertaining the intent of either party, with respect to the provisions hereof.

V.10 *Interpretations.* This Agreement and the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

V.11 *Severability.* If any provision of this Agreement or the application thereof to any person or circumstances is ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.

V.12 *Parties in Interest.* This Agreement shall be for the sole and exclusive benefit of the parties hereto and shall not be construed to confer any rights upon any third parties.

V.13 *Counterparts.* This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. Telefaxed or scanned copies of this signed Agreement shall be binding and effective as an original.

V.14 *Authority to Execute.* The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that (a) all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, (b) there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement, and (c) each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof,

V.15 *Incorporation of Recitals.* The Recitals above are incorporated herein as if repeated verbatim.

IN WITNESS WHEREOF, the undersigned parties hereto have executed this Agreement to be effective as of the date first given above.

CITY:

THE CITY OF TEXAS CITY, TEXAS,
a municipal corporation and home-rule city of
the State of Texas

BY: _____

NAME: _____

TITLE: Mayor

ATTEST:

City Secretary

Approval as to form

City Attorney

UTILITY:

**TEXAS-NEW MEXICO POWER
COMPANY,**
a corporation existing under the laws of the State
of Texas

BY: _____

NAME:

TITLE:

Exhibit A

Legal Description of Property

All that certain lot, tract or parcel of land in SECTION 12, BLOCK 12, WILLIAM K. WILSON SURVEY, ABSTRACT NUMBER 208, Galveston County, Texas, and being a part of that certain tract of land, described in the deed recorded in Document No. 2004048986 of the Official Public Records of Galveston County, Texas, the subject tract being more particularly described as follows:

BEGINNING at a found 1-inch pipe for the Northwest corner of said 6.01 acre tract of land, having coordinates of N: 13,731,139.62', E: 3,231,110.08' / LAT: 29.446039°, LONG: -95.031958°, from which a found 1-inch iron pipe bears North 41 Degrees 07 Minutes 45 Seconds East, a distance of 415.38 feet; THENCE North 85 Degrees 38 Minutes 49 Seconds East, a distance of 29.91 feet to a found 1-inch iron pipe along the North line of said 6.01 acre tract of land; THENCE North 88 Degrees 17 Minutes 14 Seconds East, a distance of 260.74 feet to a point along the North line of said 6.01 acre tract of land; THENCE North 88 Degrees 10 Minutes 41 Seconds East, a distance of 365.20 feet to the Northeast corner of said 6.01 acre tract of land; THENCE South 01 Degrees 52 Minutes 22 Seconds East, a distance of 800.70 feet to a point for the South corner of said 6.01 acre tract of land THENCE North 41 Degrees 06 Minutes 24 Seconds West, a distance of 1,033.41 feet to the POINT OF BEGINNING and enclosing 262,006 square feet or 6.01 acres of land more or less.

