

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (the “Agreement”) is entered into this ____ day of _____, 2020, by and between Evergy, Inc., on its own behalf and for the benefit of all Evergy, Inc. wholly-owned regulated utility affiliates (“Evergy”), and _____, (“Company”). In this Agreement, “Disclosing Party” refers to Evergy whenever it is disclosing information to Company, and to Company whenever it is disclosing information to Evergy, and “Recipient” refers to Evergy whenever it is receiving information from Company, and Company whenever it is receiving information from Evergy. Evergy and Company may be referred to herein individually as a “Party” and collectively as “Parties.”

RECITALS

A. Each Disclosing Party possesses certain confidential and proprietary information or trade secrets as described below (the "Confidential Information"), which derives independent economic value, actual or potential, to the Disclosing Party from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

B. In connection with the discussion of, and possible purchase of, certain renewable generation assets or the renewable energy production from such assets between Recipient and Disclosing Party (the “Transaction”), Disclosing Party is willing to provide certain of its Confidential Information to the Recipient. It is a condition to the Disclosing Party providing such Confidential Information to the Recipient, that the Recipient enter into this Agreement.

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

Section 1. "Confidential Information" Defined

(a) For purposes of this Agreement, the term "Confidential Information" shall mean all information and materials in connection with the Transaction disclosed to the Recipient or its Representatives (as defined below) by the Disclosing Party or its Representatives or any other information that the Disclosing Party treats or maintains as confidential, proprietary, restricted or otherwise as not to be disclosed generally, regardless of the form in which it is communicated or maintained (whether oral, written, electronic or visual), whether prepared by Disclosing Party or otherwise and regardless of whether such information is disclosed intentionally or inadvertently to the Recipient prior or subsequent to the signing of this Agreement. Confidential Information includes, but is not limited to, the fact of a possible transaction between the Recipient and the Disclosing Party and any and all information and materials concerning the Disclosing Party's current, future or proposed products and services, including without limitation any and all information and materials relating to the Disclosing Party's business, including without limitation financial, accounting, statistical and numerical information, contracts with customers and vendors, technical specifications, plans for business development, organizational data, marketing plans and strategies, sales data, unpublished promotional material, cost and pricing information, or customer lists, in whatever form, manner or medium recorded (if recorded), including any and all copies thereof as have been or may be provided to the Recipient or its Representatives by or on behalf of the Disclosing Party or from any other source. For purposes of this Agreement, “Representative” means, as to any Party, such

Party's affiliates and the respective directors, managers, members, officers, employees, contractors, consultants, agents, advisors (including financial and technical advisors, legal counsel and accountants), and lenders or potential lenders or funding sources of such Party.

(b) All information or materials disclosed to the Recipient by the Disclosing Party shall be considered Confidential Information hereunder unless the Recipient shall be able to establish that such information and/or materials (i) were known to the public at the time of disclosure to the Recipient; (ii) became known to the public after disclosure to the Recipient through no fault of the Recipient or its Representatives; (iii) were rightfully in the Recipient's or its Representatives' possession prior to disclosure to the Recipient; (iv) were rightfully acquired by the Recipient or any of its Representatives from a third party who was lawfully in possession of the information and was not known by the Receiving Party or its Representatives to be under an obligation to the Disclosing Party or any other party to maintain the confidentiality thereof; (v) were independently developed by the Recipient or any of its Representatives without the benefit or use of any Confidential Information; or (vi) are requested or required to be disclosed by the Recipient or any of its Representative by law, regulation, regulatory authority or court order; provided that if an event described in (vi) arises, then the Recipient agrees (a) to promptly provide the Disclosing Party with written notice of such potential disclosure, if permitted by law, (b) to provide the Disclosing Party with a reasonable opportunity to secure the confidential protection thereof, (c) to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of such request or requirement, and (d) to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information. Notwithstanding the foregoing, the Parties recognize that Confidential Information between the Parties could be the subject matter of data submittals or discovery requests in one or more Recipient state or federal regulatory proceedings. To the extent that Recipient is required to disclose Confidential Information to a regulatory agency, no notice or consent is required regarding such disclosure if: (i) the disclosure is governed by confidentiality agreements or standard protective orders issued by the applicable regulatory agency; (ii) Recipient only disclose that portion of the Confidential Information required for the regulatory proceeding; and (iii) Recipient uses reasonable efforts to ensure that such Confidential Information is afforded confidential treatment throughout the regulatory proceeding.

Section 2. Obligation of Confidentiality

(a) The Recipient agrees to maintain in strict confidence the Confidential Information. Without limiting the generality of the foregoing, the Recipient shall use at least the same degree of care with which it holds its own Confidential Information, which degree shall be not less than a reasonable degree of care. Recipient agrees (a) to keep all Confidential Information confidential and, except as otherwise permitted herein, not to disclose or reveal any Confidential Information to any person other than those of its Representatives who are actively and directly participating in evaluation or consummation of the Transaction or who otherwise need to know the Confidential Information for purposes of evaluating or financing the Transaction (it being understood that each Party shall inform its Representatives of the confidential nature of such information, shall instruct its Representatives to keep such information confidential in accordance with the terms hereof, and shall be responsible for any unauthorized disclosure or improper use thereof by its Representatives); and (b) not to use, and to ensure its Representatives do not use, Confidential Information for any purpose other than in connection with the Transaction. Each Party shall be responsible for any violation of the terms of this Agreement resulting from the acts or omissions of its Representatives and shall take all commercially reasonable measures to restrain its Representatives from any unauthorized disclosure or improper use of the Confidential Information.

(b) All Confidential Information (including all copies thereof) shall remain the exclusive property of the Disclosing Party and shall be destroyed by the Recipient or returned to the Disclosing Party on the earlier of (i) written demand therefor sent by the Disclosing Party to the Recipient; or (ii) upon termination of the Transaction. Simultaneously with such destruction or return of Confidential Information, the Recipient shall also destroy all extracts, notes, computations and all other documents prepared by or for the Recipient which contain or reflect Confidential Information (the “Evaluation Material”). The Recipient shall not be deemed to have retained or failed to destroy any Confidential Information or Evaluation Material which is an imaged document if such Confidential Information is deleted from local hard drives so long as no attempt is made to recover such Confidential Information or Evaluation Material from servers or back-up sources, provided that any such retained Confidential Information or Evaluation Material in an imaged document form shall remain subject to the disclosure and use restrictions set forth herein, for the term provided herein, notwithstanding any termination of this Agreement. Notwithstanding the foregoing, the Recipient shall not be required to destroy Confidential Information or Evaluation Material that (i) has been provided to its Board of Directors, (ii) has been provided to any governmental or quasi-governmental regulatory agency or (iii) is contained in any database maintained primarily for data security or backup purposes.

(c) Recipient hereby acknowledges that all Confidential Information is to be considered confidential and proprietary to the Disclosing Party. As between Recipient and the Disclosing Party, all proprietary rights (including but not limited to copyrights and trade secrets) in and to the Confidential Information shall remain the property of the Disclosing Party, unless otherwise agreed to by the Parties in a separate writing.

Section 3. Injunction. The Recipient hereby acknowledges and agrees that any Confidential Information disclosed to the Recipient is considered by the Disclosing Party to be of a special, unique and proprietary character, and that any breach or threatened breach of any provision of this Agreement may cause the Disclosing Party irreparable harm for which monetary damages may be inadequate. The Recipient agrees, therefore, that the Disclosing Party shall be entitled to injunctive relief to prevent or restrain any such breach or any threatened or continued breach of this Agreement, or any part hereof, and to secure the enforcement of this Agreement. Such injunctive relief shall be in addition to and without limitation of all other remedies at law or in equity available to the Disclosing Party. Notwithstanding the foregoing, the Recipient’s liability to the Disclosing Party in connection with this Agreement and any activities undertaken in connection with the evaluation of the Transaction shall be limited to direct damages and shall exclude any other liability, including without limitation liability for special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise.

Section 4. Applicability to Affiliates. Any information disclosed by an affiliated company of the Disclosing Party to Recipient related to the Transaction which would otherwise constitute Confidential Information hereunder if disclosed by Disclosing Party shall be deemed to constitute Confidential Information under this Agreement, and the rights of the Disclosing Party under this Agreement may be enforced by any such Affiliate as if such Affiliate were also a party to this Agreement. An “Affiliate” will be defined as any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the applicable Party.

Section 5. No Rights Granted. The Parties understand and agree that this Agreement does not constitute a grant by the Disclosing Party or an intention or commitment on the part of either Party to enter into the Transaction or any other transaction or to grant any right, title or interest in the Confidential Information to the Recipient or any of its Representatives.

Section 6. No Agency. This Agreement does not create any agency, partnership or joint venture relationship between the Parties.

Section 7. No Waiver. No waiver by any Party of any right or of a breach of any provision of this Agreement shall constitute a waiver of any other right or breach of any other provision, nor shall it be deemed to be a general waiver of such provision by such Party or to sanction any subsequent breach thereof by the other Party.

Section 8. No Obligation to Provide Confidential Information. Nothing in this Agreement shall be construed to require the Disclosing Party to provide, or to entitle Recipient to obtain, any Confidential Information, or obligate either Party to enter into any further agreements or to proceed with any possible relationship or other transaction, including without limitation the Transaction.

Section 9. Term. This Agreement shall terminate on the earlier of (a) thirty-six (36) months from the date hereof, or (b) written notice by either Party to the other party of its desire to terminate this Agreement. Upon early termination of this Agreement by either Party pursuant to (b), each Party's obligations with respect to Confidential Information of the other Party that was disclosed during or before the term of this Agreement shall survive and remain in effect until the date that is thirty-six (36) months from the date hereof. Such expiration shall not limit the Parties' respective rights and obligations with respect to any breach that occurs prior to such expiration.

Section 10. Nature of Information Provided. The Parties acknowledge that any Confidential Information received pursuant to this Agreement concerning the other Party's plans, as well as projected dates of same, are tentative and do not and are not intended to represent firm decisions of the Disclosing Party. The Recipient understands that neither the Disclosing Party nor any of its Representatives makes any representation or warranty as to the accuracy or completeness of the Confidential Information. The Recipient agrees that neither the Disclosing Party nor its Representatives shall have any liability to the Recipient or any of its Representatives resulting from the use of the Confidential Information or the Recipient's or its Representatives' consideration of, or participation in a process relating to, a possible Transaction other than as set forth in any definitive documentation pertaining to such Transaction executed by the parties hereto. **THE DISCLOSING PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES PERTAINING TO THE CONFIDENTIAL INFORMATION, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

Section 11. Entire Agreement. This Agreement sets forth the entire agreement among the Parties as to the subject matter hereof, and none of the terms of this Agreement shall be amended or modified except in writing signed by the Parties.

Section 12. Severability. If any provision or provisions of the Agreement shall be found to be illegal or unenforceable for any reason, such provision or provisions shall be modified or deleted in such a manner to make this Agreement enforceable, and the balance of the Agreement shall be construed as severable, independent, and separately enforceable.

Section 13. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the STATE OF MISSOURI (without regard to its conflicts of laws provisions). **TO THE EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO HEREBY KNOWINGLY,**

VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

Section 14. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and permitted assigns. No Party may assign any or all of its rights, or delegate any or all of its obligations, under this Agreement without first obtaining the written consent of the other Party; however, either Party may assign its rights (but not its obligations) under this Agreement (including the right to enforce its terms) to a parent, affiliate or subsidiary at its sole discretion without consent. Any attempted assignment or delegation in violation of this Agreement shall be void *ab initio*.

Section 15. Counterparts. This Agreement may be delivered electronically and may be signed in counterparts, each of which may be deemed an original, and all of which together constitute one and the same agreement.

Section 16. Authorization and Binding Obligations. Each Party represents to the other Party that the execution, delivery and performance of this Agreement have been duly authorized, and this Agreement has been duly executed and delivered by the signatory so authorized, and the obligations contained herein constitute the valid and binding obligations of such Party.

Section 17. Publicity. Neither Party shall make any public disclosures regarding the other Party, including without limitation in any advertisements, publications or documents without the prior written approval of the other Party.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**AUTHORIZED REPRESENTATIVE FOR
EVERGY, INC.
1200 Main St.
Kansas City, MO 64015**

Name: _____

Title: _____

**[NAME OF COMPANY]
[Address]**

Name: _____

Title: _____