

# Confidentiality Agreement

OG&E 2020 Rail Transport RFP

This Confidentiality Agreement (“Agreement”) is made and effective this \_\_\_ day of May, 2020 by and between Oklahoma Gas and Electric Company (“OG&E”), its subsidiaries and affiliates, located at 321 N. Harvey, Oklahoma City, Oklahoma 73102 and \_\_\_\_\_ located at \_\_\_\_\_. For purposes of this Agreement, both OG&E and \_\_\_\_\_ are in a position to have access to Confidential Information which will be disclosed from one party (“Disclosing Party”) to the other party (“Recipient”).

WHEREAS, each Disclosing Party possesses certain information which is either non-public, confidential, or proprietary in nature (hereinafter referred to as “Confidential Information”); and

WHEREAS, each Recipient is willing to receive disclosure of the Confidential Information pursuant to the terms of this Agreement for the purpose of discussing and evaluating various options for rail transportation to OG&E’s River Valley Power Plant.

THEREFORE, in consideration for the mutual undertakings of each Disclosing Party and each Recipient under this Agreement, the parties agree as follows:

1. **Definitions.**

As used in this Agreement, the term “**Confidential Information**” means all information, data and experience, whether of a legal, technical, business, engineering, operational or economic nature, not generally known to the public, proprietary in nature, or which would constitute a trade secret under the U.S. Uniform Trade Secrets Act, which is used, developed, or obtained pursuant to this Agreement and or supplied to or obtained by Recipient from Disclosing Party relating to business and/or research and development efforts, including without limitation, research, results of research, findings, products, proposals, formulas, test results, product development, discoveries, processes, designs, drawings, engineering studies, marketing reports, financial information, technical information, know-how, technology, prototypes, ideas, inventions, improvements, data, files, information relating to the supplier and customer identities and lists, accounting records, business and marketing plans, marketing reports, method of doing business, and all similar information, and all copies and tangible embodiments thereof (in whatever form or medium). Confidential Information may be either the property of Disclosing Party or information provided to Disclosing Party by a corporate affiliate of Disclosing Party or by a third party.

As used in this Agreement, the term “**Recipient**” shall include each Recipient, representatives and employees of each Recipient, and all affiliates, subsidiaries, and related companies of each Recipient.

As used in this Agreement, the term “**Employees**” includes third parties retained for professional advice (including, without limitation, attorneys, accountants, consultants, bankers, and financial advisors) and for temporary administrative, clerical, or programming support.

As used in this Agreement, the term “**Need to Know**” means that the Confidential Information is essential for each Recipient or Employee to perform his or her responsibilities in connection with the purposes of this Agreement.

2. **Exclusions.**

Confidential Information does not include information that: (a) is or becomes available to the public through no breach of this Agreement; (b) was previously known by either Recipient without any obligation to hold it in confidence; (c) is received from a third party free to disclose such information without restriction; (d) is independently developed by either Recipient without use of Confidential Information of Disclosing Party; (e) is approved for release by written authorization of either Disclosing Party, but only to the extent of and subject to such conditions as may be imposed in such written authorizations; (f) is required by law or regulation to be disclosed, but only to the extent and for the purposes of such required disclosure as determined by an opinion of counsel; or (g) is disclosed in response to a valid order of a court or other governmental body of the United States or any of its political subdivisions, but only to the extent of and for the purposes of such order; provided, however, that each Recipient will first notify Disclosing Party of the order and permit Disclosing Party to seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement.

3. **Recipient's Obligations.**

A. Each Recipient agrees that the Confidential Information is to be considered confidential and proprietary to Disclosing Party, and each Recipient shall hold, maintain and treat the same in confidence and trust, shall not disclose to any unauthorized entity or person, and shall not use the Confidential Information for any unauthorized purpose. The Confidential Information can and will only be used for the purposes of the business, potential business discussions, and authorized purposes between each Disclosing Party and Recipient. The Confidential Information shall only be disclosed to each Recipient’s officers, directors, or employees with a specific need to know. Each Recipient will advise those employees who gain access to Confidential Information of their obligations regarding the Confidential Information. Each Recipient will not disclose, publish, or otherwise reveal any of the Confidential Information received from Disclosing Party to any other party whatsoever except with the specific prior written authorization of Disclosing Party.

B. Confidential Information furnished in tangible form shall not be duplicated by either Recipient except for purposes of this Agreement. Each Recipient shall, within twenty (20) days of a written request by Disclosing Party, return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, or, if so directed by Disclosing Party, destroy all such Confidential Information. Recipient shall also, within ten (10) days thereafter, certify in writing that it has satisfied all obligations with respect to destruction.

4. **Ownership of Confidential Information.**

All Confidential Information (including copies thereof) shall remain the property of the Party so disclosing, and shall be returned to that Disclosing Party after the Recipient's need for it has expired, or upon the request of that Disclosing Party, and in any event, upon termination of this Agreement.

5. **Term and Termination.**

This Agreement shall terminate two years from the Effective Date of this Agreement. This Agreement may be terminated at any earlier date by mutual written agreement of the parties. However, the termination of this Agreement shall not relieve either party of the obligations imposed by this Agreement with respect to Confidential Information disclosed prior to the effective date of the termination of this Agreement and the provisions of Sections 3, 4, 5, 6 and 9 of this Agreement shall survive the termination of this Agreement for a period of five (5) years from the date of its termination, provided that the obligations of the parties with respect to trade secrets shall continue for the maximum period allowable under applicable law.

6. **No License or Warranty.**

Nothing contained herein shall be construed as granting or conferring any patent, copyright, trademark, or other proprietary rights, by license or otherwise, in any Confidential Information disclosed hereunder. No warranties of any kind are given for the Confidential Information disclosed under this Agreement.

7. **Governing Law and Equitable Relief.**

This Agreement shall be governed and construed in accordance with the laws of the State of Oklahoma, and each Recipient consents to the exclusive jurisdiction of the state courts located therein for any dispute arising out of this Agreement. Both parties agree that an impending or existing violation of any provision of this Agreement would cause such Disclosing Party irreparable injury for which it would have no adequate remedy at law, and that such Disclosing Party will be entitled to seek immediate injunctive relief prohibiting such violation without the posting of bond or other security, and/or seek specific performance of Recipient's obligations under this Agreement. Such rights of each Disclosing Party are to be in addition to any remedies otherwise available to Disclosing Party at law or in equity. The prevailing party in any dispute to enforce this Agreement shall be entitled to recover from the losing party its costs and a reasonable attorney's fee to be determined by the court.

8. **Final Agreement.**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may not be modified, amended, or waived, except by a written instrument duly executed by both parties.

9. **No Assignment.**

This Agreement shall not be assigned by either party without the prior written consent of the other. Any assignment in violation of this Section will be void. This Agreement will be binding upon the parties and their respective successors and assigns.

10. **Severability.**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be deemed deleted from this Agreement. The Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

11. **No Implied Waiver.**

Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

12. **Authority.**

Each party warrants that it has the authority to enter into this Agreement and to lawfully make the disclosures and other obligations contemplated hereunder.

13. **Headings.**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent. IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

OKLAHOMA GAS AND ELECTRIC  
COMPANY

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_