

## **CONFIDENTIALITY AGREEMENT**

WEC Energy Group, Inc. (“WEC”), on behalf of itself and its affiliates, with its principal office at 231 W. Michigan St., Milwaukee, Wisconsin 53203 and the City of Milwaukee (“City”), with its principal office at 200 East Wells St., Milwaukee, Wisconsin 53202, (collectively, the “Parties” and each a “Party”), enter into this Confidentiality Agreement, (“Agreement”) as of \_\_\_\_\_ [\_\_], 2018, (the “Effective Date”).

**WHEREAS**, the Parties intend to enter, or have entered, into discussions regarding a possible, actual or existing renewable project(s) (the “Purpose”) and the Parties intend to disclose, or have disclosed information, which may include Confidential Information, as defined herein.

**NOW THEREFORE**, in consideration of the promises the Parties are making to each other, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. **Public Records Law.** The Parties understand that the City is bound by the Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. §§ 19.31-.39. WEC acknowledges that it is obligated to assist the City in retaining and producing records that are subject to the Public Records Law. WEC acknowledges that its failure to do so shall constitute a material breach of this Agreement, and that WEC must defend and hold harmless the City from liability under that law that is incurred as a result of such a failure. Except as otherwise authorized, those records shall be maintained for four years.
2. **Confidential Information.** “Confidential Information” means all information or data disclosed by or on behalf of one Party (the “Disclosing Party”) to the other Party (the “Recipient”) pursuant to this Agreement and in connection with the Purpose, including, but not limited to, pricing, pricing options, rates, alternative rate structures, specific renewable energy project designs and related financial information, or customer information, and all copies and derivatives containing such Confidential Information, in any form or medium, tangible or intangible, communicated in writing, orally, or through visual observation. All Confidential Information shall be marked or otherwise identified to the Recipient as “Confidential Information” by the Disclosing Party.
3. **Employees and Advisors.** The terms “Disclosing Party” and “Recipient” include each Party’s respective directors, officers, and employees (collectively, “Employees”), and Affiliates that disclose Confidential Information to, or receive Confidential Information from, the other Party under this Agreement. The term “Affiliates” means any entity that now or in the future, directly or indirectly, controls, is controlled with or by, or is under common control with a Party. Unless disclosure of Confidential Information is required by law, a Party may disclose the Confidential Information to its Employees , accountants and attorneys (collectively, “Advisors”) with a “need to know” (a person has a “need to know” when that person requires the Confidential Information to perform his or her responsibilities in connection with the Purpose), provided that the Party agrees to bind its Advisors to terms at least as restrictive as those contained in this Agreement, advise them of their obligations, and indemnify the Disclosing Party for any breach of those obligations by such Advisors.
4. **Use of Confidential Information.** Each Party acknowledges the value of the Confidential Information and agrees to protect Confidential Information from disclosure to others, unless disclosure of such information is required by law, using the same degree of care used to protect its own confidential or proprietary information and in any

case a degree of care equal to or greater than generally accepted industry standards. Each Party further agrees:

- (a) to use the Confidential Information solely in connection with the Purpose;
- (b) to restrict disclosure of the Confidential Information to its Employees, Advisors and Affiliates, with a need to know; and
- (c) not to disclose the Confidential Information to any third party without Disclosing Party's prior written consent, except as otherwise provided in this Agreement.

5. **Exceptions.** The obligations of Paragraph 4 shall not apply to any Confidential Information that:

- (a) was independently developed by or for Recipient without reference to the Confidential Information; or
- (b) was in Recipient's possession before the Effective Date, provided that the source of such information, to Recipient's knowledge, was not bound by an obligation of confidentiality regarding such information; or
- (c) is or becomes generally available to the public through no fault of, or without violation of any duty of confidentiality of, Recipient; or
- (d) is received from a third party without, to Recipient's knowledge, violation of a duty of confidentiality; or
- (e) is required to be disclosed in response to a valid order or requirement of a court, authorized agency of government, law, regulation, or other legal process, including, but not limited to, any state or federal energy regulatory agency or commission, but only to the extent and for the purposes of such required disclosure.

6. **Breach.** Unless disclosure of Confidential Information is required by law, Recipient shall immediately notify Disclosing Party upon discovery of any actual or threatened unauthorized use or disclosure of Confidential Information, or any other breach of this Agreement. Recipient shall make all reasonable efforts to cooperate with Disclosing Party to mitigate the losses resulting from any actual, or threatened, unauthorized use or disclosure, regain possession of the Confidential Information, and prevent future breaches. In addition to any other rights and remedies available to it, Disclosing Party shall be entitled to seek injunctive or any other equitable relief available to remedy or prevent any breach or threatened breach of this Agreement. Unless litigation involves whether Confidential Information must be disclosed pursuant to Wisconsin's Public Records Law, any cost or expenses incurred by the prevailing Party to enforce this Agreement (including attorneys' fees, expert witness fees, and costs and expenses of investigation and litigation) shall be borne by the other Party, and Recipient shall indemnify, hold harmless and reimburse upon demand Disclosing Party for all costs expenses, losses, damages, claims, suits and proceedings arising out of such actual or threatened breach. In the event that Disclosing Party seeks injunctive relief under this Paragraph 6, Recipient agrees to waive any bond requirement that may otherwise apply to such a proceeding. The Parties agree that WEC may seek injunctive relief preventing disclosure of Confidential Information that is sought under the Wisconsin Public Records Law.

7. **Commitment.** Neither the execution of this Agreement nor the disclosure of Confidential Information shall constitute or imply any commitment, promise, or inducement to enter into any additional agreement of any kind.
8. **No Intellectual Property Rights/No Warranties.** No patent, copyright, trademark, trade secret, or other intellectual proprietary right is licensed, granted or otherwise transferred by execution of this Agreement or by disclosure of any Confidential Information hereunder. **THE DISCLOSING PARTY HEREBY DISCLAIMS ALL WARRANTIES REGARDING THE CONFIDENTIAL INFORMATION, INCLUDING ALL WARRANTIES WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND ALL WARRANTIES AS TO THE ACCURACY OR UTILITY OF SUCH CONFIDENTIAL INFORMATION.**
9. **Term and Termination.** This Agreement and the obligations contained herein shall remain in effect for one (1) year from the Effective Date or until a proposed individual customer contract for electric service under Wis. Stat. § 196.192 relating to the Purpose is submitted to the City of Milwaukee Common Council, or appropriate Council committee, for approval, whichever occurs earlier, provided that the terms of paragraph 10 shall survive the expiration of this Agreement, and provided further that such expiration shall not relieve any party for liability for breach of this Agreement occurring before such expiration.
10. **Return of Confidential Information.** The Parties shall consider all Confidential Information Disclosing Party's property. Unless required to keep copies of Confidential Information by law, if Disclosing Party requests in writing, Recipient shall promptly either return all Confidential Information (or any designated portion thereof), including all copies, to Disclosing Party or destroy such Confidential Information and provide Disclosing Party written certification of such destruction upon request.
11. **Assignment.** Neither Party may assign or otherwise transfer this Agreement without the prior written consent of the other; provided, however, that either Party may assign or transfer this Agreement to its Affiliates, successors-in-interest, or an entity that acquires direct or indirect control of substantially all of the assets of that Party upon written notice to, but without the consent of, the other Party. Any assignment in violation of this Paragraph 10 shall be void. This Agreement shall be binding upon the Parties' respective successors and permitted assigns.
12. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable, that provision shall be deemed deleted from this Agreement and replaced by a valid and enforceable provision that, so far as possible, achieves the Parties' original intent. The remaining provisions of this Agreement shall continue in full force and effect.
13. **Authority.** Each Party warrants that it has authority to enter into this Agreement.
14. **Entire Agreement.** This Agreement represents the entire understanding between the Parties regarding the Confidential Information that relates to the Purpose and supersedes all prior communications, agreements and understandings relating to the subject matter of this Agreement.
15. **Amendment.** The provisions of this Agreement may not be modified, amended, or waived, except by a written instrument signed by both of the Parties.

16. **No Waiver.** Failure of either of the Parties to enforce any provision, right or remedy under this Agreement shall not constitute a waiver of such provision, right or remedy.

17. **Compliance with Law.** This Agreement and performance shall be governed by the laws of the State of Wisconsin, excluding its conflicts of law provisions. The Parties shall comply with all applicable laws.

18. **Execution.** Each Party agrees that a scanned PDF of its signature that is delivered via electronic mail may be regarded as an original signature and that this Agreement may be executed in counterparts.

19. **Public Records Notification:** WEC understands and acknowledges that the general presumption in Wisconsin is that public records are open to the public unless there is a clear statutory or common law exception, and/or unless a records custodian makes a determination that the facts are such that public policy interests favoring nondisclosure outweigh public policy interests favoring disclosure. In the event that the City makes a determination that the Wisconsin Public Records Law requires the disclosure of Confidential Information in response to a public records request, the City agrees to provide prompt written notice to WEC that such a determination has been made, at least five business days prior to the release of the Confidential Information. After the five business days' notice period passes without WEC seeking injunctive relief, WEC agrees to waive any claim relating to a record custodian's determination that the facts are such that public policy interests favoring nondisclosure outweigh public policy interests favoring disclosure.

20. **Notice.** All notices demands and other communications required or permitted to be given under this Agreement shall be in writing and transmitted by Electronic Mail, certified United States Mail or other recognized courier guaranteeing delivery to the Parties at the following addresses:

If to WEC:

WEC Energy Group, Inc.  
231 W. Michigan St.  
Milwaukee, WI 53203  
Attn: [\_\_\_\_\_] ]  
E-Mail: [\_\_\_\_\_] ]

If to the City:

City of Milwaukee  
[\_\_\_\_\_] ]  
Milwaukee, WI [\_\_\_\_\_] ]  
  
Attn: [\_\_\_\_\_] ]  
E-Mail: [\_\_\_\_\_] ]

**[Signature page to follow]**

**IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**City of Milwaukee**

**WEC Energy Group, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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

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