



MUTUAL CONFIDENTIALITY AGREEMENT

This Mutual Confidentiality Agreement (this “**Agreement**”) is dated and effective as of _____ (the “**Effective Date**”) by and between:

TRANSWEST EXPRESS LLC, a Delaware limited liability company having offices at 555 Seventeenth Street, Suite 2400, Denver, Colorado 80202 (“**TransWest**”) and,

[_____], a _____ having offices at _____ (“**Company**”).

TransWest and Company are sometimes collectively referred to herein as the “**Parties**” and each individually as a “**Party**.” In consideration of the terms of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

RECITALS

A. TransWest is developing the TransWest Express Transmission Project, a high-voltage interregional electric transmission system (“**TWE Project**”).

B. TransWest is conducting an open solicitation process (“**Open Solicitation**”) for the initial allocation of certain transmission capacity rights on the TWE Project. TransWest is conducting the Open Solicitation pursuant to a Federal Energy Regulatory Commission (“**FERC**”) order authorizing the process, 174 FERC ¶ 61,160, Docket No. ER21-645-000 (February 26, 2021) (“**Order**”).

C. Company desires to participate in the Open Solicitation.

D. In connection with the Open Solicitation (the “**Permitted Purpose**”), the Parties will disclose Confidential Information (as defined in Section 1 below) to each other and each Party desires to maintain the confidentiality of Confidential Information disclosed by such Party to the other Party.

E. The Parties acknowledge that the Order requires TransWest to submit a compliance filing to FERC after the close of the Open Solicitation process to demonstrate that the Open Solicitation process met FERC’s requirements set forth in the Order (“**FERC Compliance Filing**”). The Parties further acknowledge that, as part of its FERC Compliance Filing, TransWest may disclose Confidential Information to FERC and that such disclosure is part of the Permitted Purpose.

AGREEMENT

1. For the purposes of this Agreement, each of the following terms has the meaning assigned to it herein:

(a) “**Representatives**” means each and all of such Party’s affiliates, directors, officers, employees, agents, consultants, advisors, subcontractors, attorneys, co-investors, prospective investors, legal counsel, auditors, financial advisors, and potential sources of financing. For purposes of this Mutual Confidentiality Agreement, TransWest’s affiliate Power Company of Wyoming LLC is specifically excluded from the definition of a Representative of TransWest.

(b) “**Disclosing Party**” means the Party that provides Confidential Information to the Receiving Party or its Representatives.

(c) “**Receiving Party**” means the Party that receives Confidential Information from the Disclosing Party or its Representatives.

(d) “**Confidential Information**” means: (i) any non-public technical, business, financial or other information (in written, electronic, oral or visual form or any other form or media whatsoever, including without limitation, any writing, instrument, agreement, letter, memorandum, map, chart, graph, blueprint, photograph, financial statement, compact disc, flash drive or other type of electronic file, or other recording or image), whether or not marked confidential, that is disclosed by Disclosing Party or its Representatives prior to or during the term of this Agreement relating to, or being within the scope of the Permitted Purpose; (ii) the substance of any discussions or communications (in any form or media whatsoever) between (A) Disclosing Party or any of its Representatives and (B) Receiving Party or any of its Representatives relating to any of the foregoing; (iii) all notes, reports, documents, analyses, compilations, forecasts, studies, synopses, and other materials of or prepared by Receiving Party or any of its Representatives that interpret, summarize, evaluate, or include any of the foregoing; and (iv) all copies (including without limitation all electronic copies) of any of the foregoing.

2. All right, title, and interest in and to the Confidential Information shall remain the exclusive property of the Disclosing Party. This Agreement shall not be interpreted or construed as granting any license or any other right to any patent, copyright, trademark, trade secret, or other proprietary right.

3. The following provisions shall apply to the Receiving Party’s receipt of any Confidential Information:

(a) The Receiving Party shall: (i) keep the Disclosing Party’s Confidential Information confidential and refrain from, directly or indirectly, disclosing, allowing access to, transmitting or transferring any such Confidential Information to or by third parties, except as expressly provided in Section 3(b) and 3(c) of this Agreement or with Disclosing Party’s prior written consent; (ii) take reasonable security precautions to keep confidential the Confidential Information, using the same safeguards that it uses to protect its own confidential information of a similar character, but at least using reasonable care; (iii) use Confidential Information solely for the Permitted Purpose; (iv) not remove any confidentiality, copyright or trademark notice, or any other proprietary legend on or in any Confidential Information; and (v) not copy or reproduce the Confidential Information

except as necessary to carry out the Permitted Purpose. Except where the Parties have entered or enter into another written agreement contemplating the exchange of confidential or proprietary information, each Party acknowledges that the other Party does not desire to receive, and agrees not to provide or cause to be provided to the other Party, any confidential or proprietary information that is unrelated to the Permitted Purpose other than as contemplated by such written agreement.

(b) Except as expressly provided for in this Agreement, the Receiving Party shall disclose Confidential Information only to those of its Representatives who have a need to know such Confidential Information to carry out the Permitted Purpose and who are themselves bound by enforceable legal or fiduciary confidentiality obligations at least as protective as those provided in this Agreement. The Receiving Party shall advise such Representatives that the disclosure and use of the Confidential Information is subject to the terms of this Agreement. Unless a Representative has entered into a separate or joinder confidentiality agreement with the Disclosing Party, the Receiving Party shall be liable to the Disclosing Party for any use or disclosure of Confidential Information by any such Representative other than in accordance with and pursuant to the terms and conditions of this Agreement.

(c) TransWest may, in its sole discretion, disclose any or all of the Confidential Information to FERC as part of its FERC Compliance Filing and any related FERC hearings or proceedings, or as required by any other federal or state law or regulation, provided that TransWest complies with the applicable procedures for protecting the confidentiality of such information.

(d) The Receiving Party shall notify the Disclosing Party immediately upon discovery of any loss or unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by the Receiving Party or its Representatives, and will cooperate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of the Confidential Information and to prevent its further unauthorized use or disclosure.

4. Notwithstanding anything else in this Agreement, the obligations restricting the use and disclosure of Confidential Information placed on the Parties shall not apply to information:

(a) Which at the time of disclosure is generally available to the public, other than through any breach of this Agreement by the Receiving Party or any of its Representatives;

(b) Which at the time of disclosure is information that the Receiving Party can demonstrate by written records or can otherwise clearly demonstrate by competent evidence was independently developed by the Receiving Party, without reliance on the Confidential Information;

(c) Which after disclosure becomes generally available to the public, other than through any breach of this Agreement by the Receiving Party or any of its Representatives;

(d) Which is subsequently lawfully and in good faith obtained by the Receiving Party from a third party, as shown by documentation sufficient to establish the third party as the source of the Confidential Information; provided that the use and disclosure of such information to the Receiving Party by such third party is not known by the Receiving Party to be in breach of a confidentiality agreement or other similar obligation of confidentiality to the Disclosing Party; or

(e) Which the Receiving Party can demonstrate by written records or can otherwise clearly demonstrate by competent evidence was in its possession, custody or control prior to the date of disclosure of such Confidential Information by the Disclosing Party or any of its Representatives; provided that the possession of such information by the Receiving Party is not known by the Receiving Party to be in breach of a confidentiality agreement or other similar obligation of confidentiality to the Disclosing Party or any of its Representatives.

5. Except as provided in Section 3(c) above, if the Receiving Party or any of its Representatives is requested or required in any legal proceeding or process (including without limitation any regulatory proceeding), or by any law, regulation or action of any governmental authority, to disclose any Confidential Information, the Receiving Party shall, to the extent practicable and permitted by law, promptly notify the Disclosing Party of such request or requirement, and the Receiving Party shall cooperate reasonably with the Disclosing Party, at the Disclosing Party's cost and expense, to resist, clarify, narrow or contest such request or requirement and to seek an appropriate protective order or other reliable assurances of nondisclosure or confidential treatment. If despite such efforts, the Receiving Party or its Representatives are required to disclose any Confidential Information, the Receiving Party and its Representatives may disclose only such Confidential Information, and then only to the person compelling such disclosure, as is required by law and, in connection with such compelled disclosure, the Receiving Party and its Representatives shall, to the extent practicable and permitted by law, reasonably cooperate with the Disclosing Party, at the Disclosing Party's cost and expense, in the Disclosing Party's efforts to obtain written assurance that confidential treatment will be accorded to such Confidential Information. Provided further, that if the Receiving Party or any of its Representatives are required to produce Confidential Information to a public agency without notice to the Disclosing Party, then the Receiving Party shall mark the Confidential Information required to be disclosed to the public agency as "Confidential and Proprietary Information."

6. This term of this Agreement shall be from the Effective Date to the three (3) year anniversary of the Effective Date. Upon such expiration or at any other time, the Receiving Party shall, within thirty (30) days of a written request from the Disclosing Party: (a) either destroy or return to the Disclosing Party all Confidential Information and all copies and summaries thereof in any form whatsoever in the possession or under the control of the Receiving Party or any of its Representatives; and (b) if requested by the Disclosing Party, provide the Disclosing Party with a certificate confirming that the Receiving Party has complied with the requirements set forth in this Section 6. Notwithstanding the foregoing, TransWest may, in its sole discretion, retain Confidential Information that it may utilize or has utilized in connection with its FERC Compliance Filing or any related FERC proceedings as set forth in Section 3(c) above.

7. Notwithstanding anything to the contrary in Section 6, the Parties acknowledge and agree that the Receiving Party's computer system may automatically retain back-up copies of Confidential Information disclosed to the Receiving Party under this Agreement. To the extent that such back-up procedures create copies of the Confidential Information, the Receiving Party may retain such copies in its archival or back-up computer storage for the period the Receiving Party normally archives backed-up computer records, and these computer copies are subject to the provisions of this Agreement until they are destroyed or erased.

8. Each Party acknowledges that: (a) the Confidential Information received from another Party constitutes valuable confidential, commercial, business and proprietary information of the Disclosing Party; (b) serious commercial disadvantage or irreparable harm and significant injury may result for the Disclosing Party if the Receiving Party breaches its obligations under this Agreement; and (c) monetary compensation may not be a sufficient remedy for any breach of this Agreement. The Receiving Party agrees that the Disclosing Party will have the right, without limitation, to seek and obtain injunctive relief, specific performance and other equitable relief without posting bond or other security, to enforce the obligations imposed on the Receiving Party in this Agreement, in addition to any other rights or remedies that the Disclosing Party may have. In addition, the successful party in any action or proceeding brought to enforce this Agreement or to recover damages or other relief on account of any alleged breach of this Agreement shall be entitled to recover costs, expenses, and fees incurred in any such action or proceeding, including reasonable attorney's fees and expenses.

9. With respect to any information, including but not limited to Confidential Information, which the Disclosing Party furnishes or otherwise discloses to the Receiving Party, it is understood and agreed that (a) there is an inherent risk of error in the acquisition, processing, and interpretation of technical data, and (b) the Disclosing Party does not make any representations or warranties, express or implied, as to the accuracy, quality, completeness or fitness for a particular purpose thereof. It is further understood and agreed that neither the Disclosing Party nor its Representatives shall have any liability or responsibility to the Receiving Party (except pursuant to this Agreement) or to any other person resulting from the use of or reliance upon any information so furnished or otherwise provided.

10. It is expressly understood that this Agreement is not and shall not be construed as any form of a letter of intent or agreement to enter into any type of transaction. This Agreement is to evidence the Parties' agreement to maintain the confidentiality of the Confidential Information and shall not constitute any commitment or obligation on the part of either Party to enter into any specific contractual arrangement of any nature whatsoever. Each Party hereto agrees that unless and until a final definitive agreement with respect to the Permitted Purpose (a "**Definitive Agreement**") has been executed and delivered, neither it nor the other Party hereto will be under any legal obligation of any kind whatsoever with respect to such a transaction by virtue of this Agreement or any written or oral expression with respect to such a transaction by any of its Representatives except for the matters specifically agreed to herein.

11. The Parties may not assign or otherwise transfer their rights or delegate their duties or obligations under this Agreement without prior written consent of the other Party. Any such assignment or other transfer without the required prior written consent shall be null and void.

12. All notices, requests, and demands to or upon the respective Party to be effective shall be in writing (including by electronic mail), and shall be deemed to have been duly given or made when delivered by hand (including by courier service), or upon actual receipt or, in the case of electronic mail notice, when confirmation is received, addressed to the addresses set forth below or to such other address as may be designated by any Party in a written notice to the other Party.

Lisa Christian
David Smith
TransWest Express LLC
555 Seventeenth Street, Suite 2400
Denver, CO 80202

Phone: 303-298-1000
E-mail: lisa.christian@tac-denver.com
E-mail: david.smith@tac-denver.com

13. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to such state's choice of law principles to the contrary. The Parties consent to the exclusive jurisdiction and venue in any court of competent jurisdiction in Colorado and in the United States District Court for the District of Colorado and to service of process under the statutes of the State of Colorado. No failure or delay by any Party in exercising any right, power or privilege accorded such Party hereunder shall operate as a waiver thereof, nor shall the waiver by any Party of a breach of any provision of this Agreement operate or be construed as a waiver of any subsequent breach.

14. This Agreement shall not create between the Parties a partnership, joint venture, agency or any other special relationship, and neither Party shall by virtue hereof be or represent itself to any other person as being the partner of, joint venturer with or agent of the other Party. Neither Party shall have any right to legally bind or commit the other Party in any manner whatsoever with respect to a potential transaction.

15. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter hereof and cancels and supersedes any prior discussions, understandings and agreements between the Parties with respect to such subject matter. It is understood that the terms of access by Receiving Party or any of its Representatives to Confidential Information contained in any data room or website shall be superseded by the terms and conditions of this Agreement. This Agreement shall not be amended or modified, except by a written instrument duly authorized and executed by both of the Parties.

16. If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such validity or unenforceability shall apply only to such provision and all other provisions hereof shall continue in full force and effect.

17. Each Party shall bear all costs and expenses incurred by it under or in connection with this Agreement. Nothing in this Agreement shall be construed as an obligation by either Party to enter into any additional contract or other business relationship with the other Party in connection with or as a result of the disclosure or receipt of Confidential Information.

18. Each Party may decide what Confidential Information it desires to provide or withhold and nothing in this Agreement shall require either Party to disclose any specific Confidential Information to the other Party.

19. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement. A signature page in “PDF” format to this Agreement shall be deemed an original and binding upon the Party against which enforcement is sought.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TRANSWEST EXPRESS LLC

[_____]

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____