



# City of Grand Island

Tuesday, September 28, 2021

Council Session

## Item G-8

**#2021-241 - Approving Renewable Energy Certificate Purchase and Sale Agreement (Evergy)**

Staff Contact: Tim Luchsinger, Stacy Nonhof

# Council Agenda Memo

**From:** Timothy Luchsinger, Utilities Director  
Stacy Nonhof, Interim City Attorney

**Meeting:** September 28, 2021

**Subject:** Renewable Energy Certificate Purchase and Sale Agreement -  
Evergy

**Presenter(s):** Timothy Luchsinger, Utilities Director

## Background

Included in the Grand Island Utilities Department's generation portfolio are several wind facilities, primarily the Prairie Breeze III project. Part of the decision to enter into these projects was in anticipation of implementation of the federal government's proposed Clean Power Plan, in which renewable energy credits (REC's) from wind generation projects could be used to offset carbon dioxide emissions from a utility's fossil fueled generation source. Implementation of this plan did not occur; however, the Utilities Department has been accruing RECs and will continue to do so until possible regulations will require their use. There is a demand and a market for RECs, primarily from utilities that operate in states or regions that have renewable energy standards or from corporate mandates for reducing their carbon footprint. Looking for expertise in marketing our RECs, Utilities Department management staff developed a Request for Proposals for Renewable Energy Credit Marketing Services in accordance with City procurement policies.

## Discussion

Two proposals were received, however, only the proposal from Evergy Energy Partners met the REC marketing requirements of the RFP. Several options were discussed with Evergy with the intent on obtaining an equitable price for the RECs, while minimizing any risk to the Utilities Department. The option agreed upon involves Evergy purchasing the majority of the anticipated RECs produced by Prairie Breeze III for the years 2022 through 2024, and marketing the sale of RECs produced above this amount and the historical RECs already in the Utilities Department's account for a commission fee. The Renewable Energy Certificate Purchase and Sale Agreement with Evergy Kansas Central, Inc., is recommended by Utilities Department and Legal staff to be approved for execution by the mayor.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand.  
The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to a future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends that the Council approve the Renewable Energy Certificate Purchase and Sale Agreement with Evergy Kansas Central, Inc., for execution by the Mayor.

## **Sample Motion**

Move to approve the Renewable Energy Certificate Purchase and Sale Agreement with Evergy Kansas Central, Inc., for execution by the Mayor.

**RENEWABLE ENERGY CERTIFICATE  
PURCHASE AND SALE AGREEMENT**

**THIS RENEWABLE ENERGY CERTIFICATE PURCHASE AND SALE AGREEMENT** (“**Agreement**”) is made as of September\_\_\_\_\_, 2021 (the “**Effective Date**”) between City of Grand Island, Nebraska (the “**City of Grand Island**”) with its principal place of business at \_\_\_\_\_ and Evergy Kansas Central, Inc. (“**Evergy**”) with its principal place of business at 818 South Kansas Avenue, 1st Floor, Topeka, KS 66612 (each a “**Party**” and collectively, the “**Parties**”).

WHEREAS, the Parties wish to buy and sell RECs (as hereinafter defined) on the terms set forth herein;

NOW THEREFORE, in consideration of their mutual covenants herein, the Parties agree as follows:

**ARTICLE 1  
DEFINITIONS**

“**Applicable Standard**” means the state or federal RPS or other mandatory or voluntary standard or set of rules specified in the Confirmation Letter.

“**Applicable Tracking System**” means the generation information system, generation attribute tracking system or other system specified in the Confirmation Letter that records generation from the Eligible Renewable Resources in a particular geographic region.

“**Attestation Form**” means the applicable attestation form required under the Applicable Standard identified in the Confirmation Letter.

“**Business Day**” means a day on which Federal Reserve member banks are open for business, beginning at 8:00 a.m. and end at 5:00 p.m. Eastern Prevailing Time.

“**Buyer**” is the Party buying RECs.

“**Confirmation Letter**” or “**Confirm**” means a Confirmation Letter included as Exhibit A, which constitutes part of and is subject to the terms and provisions of the Agreement.

“**Contract Price**” means the amount payable by Buyer to Seller for the RECs as agreed upon in the Confirmation Letter.

“**Costs**” means the present value of brokerage fees, commission, attorneys fees, and other similar third party transactions costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating or replacing any arrangement pursuant to which it has hedged its obligations relating to a Terminated Transaction; and any charges, penalties, fines or fees imposed or assessed against the Non-Defaulting Party, or the entity to which the Non-Defaulting Party had resold the RECs, under the Applicable Standard on account of Delivery not occurring on the Delivery Deadline, as determined by the Non-Defaulting Party in a commercially reasonable manner.

“**Default**” and “**Defaulting Party**” are defined in Article 8.

“**Delivery**” or “**Deliver**” means delivery of the RECs by Seller to Buyer in accordance with the Applicable Standard by: (i) Seller’s electronic transfer of RECs to the Buyer’s account via and in

Internal Use Only

accordance with the rules of the Applicable Tracking System, (ii) Buyer's provision to Seller of an Attestation, or (iii) as otherwise specified in the Confirmation Letter or by the Applicable Standard.

**"Delivery Deadline"** means the date specified in the Confirmation Letter.

**"Early Termination Date"** is defined in Article 9.2.

**"Eligible Renewable Resources"** mean sources of renewable energy that meet all requirements of the Applicable Standard.

**"Energy"** means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

**"Environmental Attributes"** means those aspects, claims, characteristics and benefits associated with the generation of a quantity of electricity by the Facility, other than the Energy produced, embodied in the REC pursuant to the Applicable Standard, and, in the absence of any withholding of any part thereof by Seller, all of them, and includes all the environmental, power source, and emission characteristics, credits, allowances, reductions, offsets, and benefits associated with the generation of electricity from the Facility and its displacement of generation from non-renewable energy resources, and any avoided emissions of carbon dioxide, methane, and any other greenhouse gases, but do not include (i) any avoided emissions of nitrogen oxides (NOx) during enforcement seasons for states participating in the Environmental Protection Agency's NOx Budget Trading Program, (ii) production tax credits and investment tax credits associated with the Facility, (iii) any liabilities, including adverse wildlife or environmental impacts or (iv), unless the Parties have expressly agreed otherwise, tradable emission allowances or other entitlements to produce emissions issued by a governmental authority and allocated to the Facility on a basis other than actual generation of avoided emissions associated with the generation of electricity by the Facility.

**"Facility"** means, if specified, the resource designated in a Confirmation Letter, which the Seller represents is an Eligible Renewable Resource(s).

**"Firm"** is defined in Article 2.5.1.

**"Force Majeure"** means an event or circumstance which materially adversely affects the ability of a Party to perform its obligations under this Agreement, which event or circumstance was not reasonably anticipated as of the Trade Date and which is not within the reasonable control of, or the result of the negligence of, the Party claiming Force Majeure, and which the claiming Party is unable to overcome or avoid or cause to be avoided, by the exercise of reasonable care. Force Majeure may not be based on (i) the loss or failure of Buyer's markets; (ii) Buyer's inability economically to use or resell the RECs; (iii) Seller's ability to sell the RECs to another at a price greater than the Contract Price; (iv) Buyer's ability to produce RECs; or (v) Buyer's ability to purchase product similar to the RECs at a price less than the Contract Price. With respect to a Party's obligation to make payments hereunder, Force Majeure will be only an event or act of a governmental authority that on any day disables the banking system through which a Party makes such payments.

**"Gains"** mean the present value of the economic benefit to a Party, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

**"Interest Rate"** is equal to Prime lending rate published under the heading "Money Rates" in the Wall Street Journal.

“**Losses**” means the present value of the economic loss to a Party, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

“**MWh**” means megawatt-hour.

“**Non-Defaulting Party**” is defined in Article 9.2.

“**Payment Date**” is defined in Article 5.1.

“**Project Contingent**” is defined in Article 2.5.3.

“**Renewable Energy Certificate**” or “**RECs**” means the Environmental Attributes and Reporting Rights associated with the generation of one (1) MWh of Energy from one or more Facilities.

“**Renewable Portfolio Standard**” or “**RPS**” means a state or federal law, rule or regulation that requires a stated amount or minimum proportion or quantity of Energy that is sold or used by specified persons to be generated from Eligible Renewable Resources.

“**Reporting Rights**” means the right to report and register the exclusive ownership of the Environmental Attributes in compliance with federal, state, or local law, if applicable, and to a federal or state agency or any other party at the Buyer’s discretion, and include without limitation those Reporting Rights accruing under Section 1605(b) of the Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

“**Seller**” is the Party selling RECs.

“**Settlement Amount**” means the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Article 9.2.

“**Term**” means the duration of this Agreement, as set forth in Article 2.1.

“**Termination Payment**” is defined in Article 9.3

“**Terminated Transaction**” is defined in Article 9.2.

“**Trade Date**” means the date of the Confirmation Letter.

“**Unit Contingent**” is defined in Article 2.5.2.

“**Vintage**” means the calendar year, quarter, or other specified period of time in which the Energy associated with the RECs was generated.

**Rules of Construction.** “Or” is not necessarily exclusive. “Hereof,” “herein,” “hereunder,” and similar words refer to this Agreement in its entirety. “Articles” and “Exhibits” refer to Articles and Exhibits hereof unless otherwise stated or indicated. “Including” is not limiting and means “including without limitation”. All accounting terms and computations are construed in accordance with generally accepted accounting principles consistently applied. All references to a particular entity or market price index include a reference to such entity’s or index’s successors and (if applicable) permitted assigns.

## ARTICLE 2 TRANSACTION

### 2.1. Term.

The term (“Term”) of this Agreement commences on the Effective Date and continues until terminated by either Party upon thirty (30) days’ written notice, except that any such termination is not effective until all payments, Deliveries and other obligations of the Parties under this Agreement have been completed.

### 2.2. Sale and Purchase Obligation.

Seller agrees to provide and Buyer agrees to purchase RECs according to the terms of this Agreement and any Confirmation Letters now or hereafter entered into between the Parties.

### 2.3. Quantity and Price.

Seller shall sell and Buyer shall purchase RECs in the quantities and at the Contract Prices specified in Confirmation Letters now or hereafter entered into between the Parties.

### 2.4. Disclosure.

In order to promote the sale of RECs to its customers or potential customers, Buyer is expressly authorized to disclose to third parties Seller’s name and renewable generation facility details including location, capacity, output, commercial on-line date, and vintage of RECs. Any disclosure will exclude such confidential details as price and payment term, unless otherwise required by Nebraska Public Records law. Buyer is further authorized to, at Buyer's own expense and with Seller’s reasonable cooperation, monitor, measure, verify, calculate, disclose and claim for the benefit of Buyer any matter respecting the RECs or any aspects thereof pursuant to any present or future protocol, standard, or guidance.

### 2.5. Delivery.

Seller shall Deliver, and Buyer shall receive, the RECs to Buyer by the Delivery Deadline via the Applicable Tracking System (or other mechanism provided for in the Confirmation Letter) such that all rights, title to and interest in the RECs shall transfer from Seller to Buyer upon such delivery and in accordance with the rules of the Applicable Tracking System, and Buyer will then have the exclusive right to use the RECs under the Applicable Standard or under any other program for which there exists a market registry or reporting for the RECs.

#### 2.5.1 Firm Delivery Obligation

If the Confirmation Letter provides that the RECs Delivery obligation is a “Firm” obligation, the Seller shall transfer the RECs by the Delivery Deadline, without excuse other than Force Majeure. Unless otherwise specified in the Confirmation Letter, the Delivery obligation thereunder shall be deemed Firm.

#### 2.5.2 Unit Contingent Delivery Obligation.

If the Confirmation Letter provides that the RECs Delivery obligation is “Unit Contingent”, then Seller’s obligations to Deliver the RECs is excused to the extent that the Facility is not able to

Internal Use Only

generate Environmental Attributes in the Vintage or other agreed time period as specified in the Confirmation Letter, due to the performance of the Facility.

### **2.5.3 Project Contingent Delivery Obligation.**

If the Confirmation Letter provides that the RECs Delivery obligation is “**Project Contingent**”, then Seller’s obligation to Deliver the RECs is excused to the extent that the Facility is not able to generate the Environmental Attributes in the Vintage or other agreed time period as specified in the Confirmation Letter, due to a delay or failure in constructing or obtaining necessary approvals to construct or modify and operate the new or modified Facility, or due to other reason(s) as specified in the Confirmation Letter.

## **2.6 Confirmation**

Unless otherwise agreed in writing, Seller will send Buyer a Confirmation Letter, which may be in substantially the form attached hereto as Exhibit A, as modified to support the specific RECs. Upon receipt of such Confirmation Letter, the other Party shall promptly return a written acceptance thereof, which may be signed copy of the Confirmation Letter.

## **ARTICLE 3 REPRESENTATIONS**

### **3.1. Authority.**

Each Party represents and warrants to the other Party that (i) it is a legal entity, duly formed and validly existing and in good standing under the laws of the state of its formation, (ii) it has the full power and authority to execute, deliver, and perform this Agreement and to carry out the transactions contemplated hereby; (iii) its execution and delivery hereof and performance of the transactions contemplated hereunder have been duly authorized by all requisite entity action, and this Agreement has been duly executed and delivered by it and constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws generally affecting creditors’ rights and by equitable principles; (iv) no authorization, consent, notice to or registration or filing with any governmental authority is required for the execution, delivery and performance by it hereof; (v) none of the execution, delivery and performance by it hereof conflicts with or will result in a breach or violation of any law, contract or instrument to which it is bound; (vi) there are no proceedings by or before any governmental authority, now pending or (to the knowledge of such Party) threatened, that if adversely determined could have a material adverse effect on such Party’s ability to perform the Party’s obligations under this Agreement; (vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and (viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

### **3.2. Forward Contract Merchant.**

Each Party represents that it is a “forward contract merchant” within the meaning of Section 101(26) of the Bankruptcy Code, and this Agreement and all transactions hereunder constitute “forward contracts” within the meaning of Section 101(25) of the Bankruptcy Code.

Internal Use Only

### **3.3. Seller Representations and Warranties.**

Seller agrees, represents, and warrants to Buyer that:

- a) Each REC represents the Environmental Attributes and Reporting Rights associated with the generation of one (1) MWh of Energy from one or more Facilities. Seller has the contractual rights to sell all right, title, and interest in the RECs agreed to be Delivered hereunder.
- b) Seller has not sold the RECs to any other person or entity, and that at the time of Delivery all rights, title, and interest in the RECs are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever.
- c) The Energy generated with the RECs was not and will not be separately sold, marketed, reported, or otherwise represented as renewable energy, renewable electricity, clean energy, zero-emission energy, or in any similar manner.
- d) The RECs Delivered hereunder, and the associated Environmental Attributes and Reporting Rights will vest in Buyer, and Buyer will (i) have the exclusive rights to make all claims as to the Environmental Attributes associated with energy associated with such RECs generated by the Facility, or other applicable Facility, and (ii) have the right to report and register, as applicable, the exclusive ownership of the Environmental Attributes with any registry, system, agency, authority, or other party, either voluntarily or in compliance with any present or future domestic, international, or foreign law, regulation, registry or program.

## **ARTICLE 4 BILLING AND PAYMENT**

### **4.1. Billing and Payment Terms.**

Buyer shall pay the Contract Price as specified in EXHIBIT A – CONFIRMATION LETTER. Buyer is not obligated to pay for any RECs that have not been Delivered.

### **4.2. Weekends and Holidays.**

If Payment Date falls on a Saturday or bank holiday in New York, New York other than a Monday then the value of the previous New York banking day shall apply. If Payment Date falls on a Sunday or Monday banking holiday in New York, New York the value following New York, New York banking day shall apply.

### **4.3. Late Payments.**

Without limiting any other rights provided for herein, all overdue payments shall bear interest from the Payment Date to the date of actual payment at a rate equal to the lesser of (i) two percent over the Interest Rate and (ii) the maximum rate permitted by applicable law.

### **4.4. Disputes.**

To the extent a Party, in good faith, disputes any part of an invoice, such party shall pay the undisputed amount invoiced by the Payment Date. If any amount withheld under dispute is finally determined to

Internal Use Only

have been due, such withheld amount shall be forwarded to the party to whom such amount is owed within twenty (20) Business Days of such determination, along with interest at the Interest Rate for overdue payments from, and including, the Payment Date, but excluding the date paid. Any dispute with respect to an invoice is waived unless the other Party is notified in writing within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived.

**4.5. Taxes.**

Seller shall pay or cause to be paid all sales and other taxes imposed by any government authority on or with respect to the RECs Delivered prior and up to Delivery. Buyer shall pay or cause to be paid any of the same arising thereafter.

**4.6. Invoice and Payment Instructions.**

Payment shall be made by electronic funds transfer, or by other mutually agreed upon method, in immediately available funds, to the bank account name and account number as specified below, or as otherwise notified in writing to the party making payment by the party to whom payment is to be made.

Invoices to the City of Grand Island will be sent to:

City of Grand Island  
100 E. 1<sup>st</sup> Street  
Grand Island, NE 68801  
Attention: Tim Luchsinger, Utilities Director  
Phone: 308-385-5481  
Email: tim.luchsinger@giud.com

Payments to the City of Grand Island will be sent to:

City of Grand Island  
P.O. Box 1968  
Grand Island, NE 68802-1968  
Attention: Carla Kokes  
Phone: 308-389-0165  
Email: karlak@grand-island.com

Wiring instructions:

Bank: Five Points Bank, Grand Island, NE  
ABA: 104901678  
Account: 10731784  
Beneficiary: City of Grand Island  
Ref: Renewable Energy Credits

Invoices to Evergy Kansas Central, Inc. will be sent to:

Evergy Kansas Central, Inc.  
818 South Kansas Avenue  
1st Floor  
Topeka, KS 66612

Internal Use Only

Attn: Jill Koch  
Phone: (785) 575-1644  
Email: [Jill.Koch@evergy.com](mailto:Jill.Koch@evergy.com)

Payments to Evergy Kansas Central, Inc. will be sent to:

Evergy Kansas Central, Inc.  
818 South Kansas Avenue  
1st Floor  
Topeka, KS 66612  
Attn: Jill Koch  
Phone: (785) 575-1644  
Email: [Jill.Koch@evergy.com](mailto:Jill.Koch@evergy.com)

Wiring instructions:

Bank: Wells Fargo Bank, N.A., San Francisco, CA  
ABA: 121000248  
Account: 2000027339736  
Beneficiary: Evergy Kansas Central, Inc.  
Ref: Renewable Energy Credits

## ARTICLE 5 NOTICES

All notices, requests, demands, offers, and other communications required or permitted to be made under this Agreement will be in writing and will be effective only if delivered: (a) in person, (b) by a nationally recognized delivery service, (c) by United States Mail, or (d) by electronic mail where mutually agreed. Notices are effective when received, except that notice by email is effective on confirmation of receipt only. Either Party may change its address or contact person(s) for notices by giving notice of such change consistent with this Article.

If to Evergy:

Evergy Kansas Central  
818 South Kansas Avenue  
1st Floor  
Topeka, KS 66612  
Attn: Mgr, Energy Trading & Credit Risk  
Phone: (785) 575-1648  
Email: [Credit.Risk@evergy.com](mailto:Credit.Risk@evergy.com)

If to the City of Grand Island:

City of Grand Island  
100 E. 1<sup>st</sup> Street  
Grand Island, NE 68801  
Attention: Tim Luchsinger,  
Utilities Director  
Phone: 308-385-5481  
Email:  
[tim.luchsinger@giud.com](mailto:tim.luchsinger@giud.com)

## ARTICLE 6 GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement is governed by and construed in accordance with the laws of THE STATE OF NEBRASKA without regard to its conflict of laws principles.

Internal Use Only

**ARTICLE 7  
ATTORNEY’S FEES**

In the event of any suit or other proceeding between any of the Parties hereto with respect to any of the transactions contemplated hereby or subject matter hereof, the prevailing Party shall be entitled to recover reasonable attorneys’ fees, costs (including at the trial and appellate levels) and expenses of investigation.

**ARTICLE 8  
DEFAULTS**

A Party is in default (“**Default**”) hereunder if that Party (the “**Defaulting Party**”) does any of the following (each an “**Event of Default**”):

- (a) breach any of its material obligations herein and not cure within five (5) Business Days of written notice of such breach;
- (b) if any representation or warranty made by it herein proves to have been misleading or false in any material respect when made and such Party does not cure the underlying facts so as to make such representation and warranty correct and not misleading within five (5) Business Days of written notice; or
- (c) if a Party:
  - (i) makes an assignment or any general arrangement for the benefit of its creditors,
  - (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it, or
  - (iii) otherwise becomes bankrupt or insolvent (however evidenced).

**ARTICLE 9  
REMEDIES UPON DEFAULT**

**9.1. Liquidated Damages.**

Buyer and Seller agree the amounts that are determined to be due from one Party to the other pursuant to this Article in its entirety represents the liquidated damages of each, and no part hereof represents a penalty.

**9.2. Remedies.**

Upon an Event of Default, the other Party (the “**Non-Defaulting Party**”) may do any or all of the following: (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (“**Early Termination Date**”) to accelerate all amounts owing between the Parties and to liquidate and terminate all or less than all transactions (each referred to as a “Terminated Transaction”) between the Parties, (ii) withhold any payments due in respect of this Agreement and any other agreements between the Parties to the extent of its damages pursuant to this Article 10, (iii) suspend performance, and (iv) exercise such remedies as provided herein, including an action for damages (except as limited by Article 10.5). The Non-Defaulting Party will calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transactions as of the

Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable). Without being required to do any of the foregoing or set a Termination Payment for all transactions and Confirmation Letters, if either Party does not Deliver any RECs by the Delivery Deadline as set forth on a Confirmation Letter, the Buyer may treat that Confirmation Letter as being in Default and a Terminated Transaction, without terminating or cancelling any other Confirmation Letters hereunder, and calculate, as a Non-Defaulting party, the amount due from the Seller for such Terminated Transaction, and in such case Seller shall pay such amount within two days of notice from the Non-Defaulting Party.

**9.3. Net Out of Settlement Amounts.**

The Non-Defaulting Party will aggregate all Settlement Amounts into a single amount by netting out (a) all amounts that are due to the Defaulting Party for RECs that has been Delivered and not yet paid for, plus, at the option of the Non-Defaulting Party, any or all other amounts due to the Non-Defaulting Party under this Agreement against (b) all Settlement Amount that are due to the Non-Defaulting Party under this Agreement, so that all such amounts will be netted out to a single liquidated amount (the “**Termination Payment**”) payable by the Defaulting Party. The Termination Payment, if any, is due from the Defaulting Party to the Non-Defaulting Party within two (2) business days following notice.

**9.4. Calculation Disputes.**

If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Settlement Amount or Termination Payment, in whole or in part, the Defaulting Party will, within two (2) Business Days of receipt of the Non-Defaulting Party’s calculation, provide the Non-Defaulting Party a detailed written explanation of the basis for such dispute.

**9.5. Limitation on Damages.**

The Defaulting Party’s liability will be limited to direct, actual damages only, and such direct, actual damages will be the sole and exclusive remedy hereunder. Except with respect to payment of Costs, in no event will either Party be liable to the other under this Agreement for any consequential, incidental, punitive, exemplary, or indirect damages in tort, contract, or otherwise.

**9.6. Exclusive Remedy.**

THE REMEDIES SET FORTH IN THIS ARTICLE 9 ARE THE SOLE AND EXCLUSIVE REMEDIES IN THE EVENT OF A DEFAULT OF A PARTY’S OBLIGATIONS TO SELL OR PURCHASE RECS, AND A PARTY’S LIABILITY SHALL BE LIMITED AS SET FORTH IN THIS ARTICLE. ALL OTHER REMEDIES OR DAMAGES FOR FAILURE TO SELL OR PURCHASE RECS AT LAW ARE HEREBY WAIVED.

**9.7. Force Majeure.**

If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect to this Agreement, that upon such Party’s giving notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, such notice to be confirmed in writing to the other Party, the obligations of the claiming Party will, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the claiming Party will not be liable to the other Party for, or on account of, any loss, damage, injury or

expense resulting from, or arising out of such event of Force Majeure. The Party receiving such notice of Force Majeure will have until the end of the Business Day following such receipt to notify the claiming Party that it objects to or disputes the existence of an event of Force Majeure.

## **ARTICLE 10 STANDARD PROVISIONS**

### **10.1. Additional Documents.**

Each Party, upon the reasonable request of the other Party, will perform any further acts and execute and deliver such documents that may be necessary to carry out the intent and purpose hereof.

### **10.2. Assignment.**

Neither Party shall transfer or assign this Agreement, in whole or in part, without the other's written consent, which will not be unreasonably withheld, conditioned or delayed; except that a Party may, without consent (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to an affiliate if the affiliate's creditworthiness is equal to or higher than that of Seller; or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Seller whose creditworthiness is equal to or higher than that of Seller; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions of this Agreement. Any transfer or assignment without the requisite prior consent is void ab initio. All of the rights, benefits, duties, liabilities, and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors and permitted assigns. By consenting to one assignment a Party will not be deemed to have consented to a subsequent assignment.

### **10.3. Audit and Inspection.**

Buyer has the right during normal working hours, to examine the records of the Seller, including records related to the Facility, if applicable, to the extent reasonably and commercially necessary to confirm Seller's right, title, and interest in the RECs Delivered hereunder and that such RECs continue to meet the Applicable Standards, and to verify the accuracy of any statement, charge, data, or computations made pursuant hereto. Seller shall maintain adequate records to assist Buyer in meeting any reporting or registration requirements associated with the RECs. Seller shall provide such records upon reasonable notice from Buyer. If any such examination reveals any inaccuracy in any statement, the Parties shall make the necessary adjustments promptly, and amounts discovered to be so due shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid.

### **10.4. Confidentiality.**

The Parties are expressly authorized to disclose the existence of this Agreement, including the quantity and term of the sale of RECs and Seller's name and Facility details including, but not limited to, location, capacity, output, commercial on-line date, and cost of Facility, to third parties. Unless otherwise provided, all other terms of this Agreement, including price and payment terms, are confidential and neither Party may disclose such confidential information to anyone, other than (i) as may be agreed to in writing by the Parties; (ii) to any of such Parties' directors, officers and employees and directors, officers and employees of affiliated companies and representatives thereof or their advisors who need to know such information and agree to treat such information confidentially; (iii) to the extent required to be disclosed by applicable law or legal process, including disclosures subject to Nebraska law and a public records request as a public entity; or (iv) to any actual or potential lender or lenders providing financing to

Internal Use Only

a Party or any of its affiliates, to any actual or potential investor in a Party or any of its affiliates or to any other potential acquirer of any direct or indirect ownership interest in Party or any of its affiliates or to any advisor providing professional advice to Party or any of its affiliates or to any such actual or potential lender, investor or acquirer who needs to know such information and agree to treat such information confidentially. The Parties are entitled to all remedies available at law or in equity, including specific performance, to enforce this provision; however, neither Party will be liable for any damage suffered as a result of the use or disclosure of confidential information made in accordance with the express terms and conditions of this Agreement. This provision will survive for a period of ten (10) years following the expiration of this Agreement.

**10.5. Counterparts.**

This Agreement may be executed by telefacsimile and in one or more counterparts, all of which taken together will constitute one and the same original instrument.

**10.6. Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof, and supersedes all previous communications, representations, or contracts, either written or oral, that purport to describe or embody the subject matter hereof. There are no oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

**10.7. Exhibits.**

The exhibits attached hereto are incorporated into this Agreement by reference. The exhibits may only be revised upon mutual agreement between the Parties unless otherwise specified in the exhibits. In the event of a conflict between this Agreement and the Confirmation Letter, the terms of the Confirmation Letter shall prevail.

**10.8. No Third-Party Beneficiaries.**

There are no intended third-party beneficiaries hereof, and this Agreement should not be construed to create or confer any right or interest in or to, or to grant any remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation, or undertaking established herein.

**10.9. Severability.**

Any part hereof that is or becomes invalid, illegal, or unenforceable may be severed from the remainder hereof, and to the extent possible, the Parties will use reasonable efforts to replace any such part with provisions that preserve their original intent.

**10.10. Survival Rights.**

This Agreement will continue in effect after termination to the extent necessary to allow or require either Party to fulfill rights or obligations that arose under the Agreement.

**10.11. Waiver, Amendment.**

None of the terms or conditions of this Agreement may be amended or waived except in a writing signed by the Parties. The Parties agree that no waiver, amendment, or modification of this Agreement will be

established by conduct, custom, or course of dealing. The failure of a Party to require performance of any provision of this Agreement will not limit such Party's right to seek such performance at a later time. Similarly, a Party's waiver of its rights with respect to any Default or any other matter arising in connection with this Agreement will not be considered a waiver with respect to any subsequent Default or matter.

**10.12. Indemnification.**

Each Party agrees to protect, defend, indemnify, and hold the other Party, its officers, employees and agents, harmless from all losses, costs, damages, injuries, penalties, claims, or liabilities of any nature, including bodily injury or death to any individual or physical damage to or loss of tangible property caused by or arising out of the work performed or to be performed under this Agreement to the extent that such injury or damage is caused by the negligence or willful misconduct of the indemnifying Party, its officers, employees and agents.

**10.13 Change in Law.**

If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable, or otherwise revokes or eliminates the Applicable Standard, the Parties hereto agree to negotiate in good faith to amend this Agreement to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement.

**10.14 Recording**

Each Party consents to the recording of its trading, marketing and scheduling representatives' telephone conversations without any further notice. Any tape recordings may be submitted in evidence to any court or in any legal proceeding for the purpose of establishing any matter relating to the transaction. In addition, the Parties agree not to contest the authority of either Party's employees to enter into this Agreement or the Confirmation Letters generated pursuant to this Agreement. Notwithstanding the foregoing, any agreement with respect to the transaction shall be in a writing signed by both Parties.

*[signature page follows]*

**ARTICLE 11  
SIGNATURES**

Each Party represents that the person signing this Agreement on its behalf is authorized to enter into this Agreement on behalf of the Party for whom they sign.

**IN WITNESS WHEREOF**, the Parties understand and agree to the terms and conditions contained herein and agree to be bound thereby.

<b>City of Grand Island, Nebraska</b>		<b>Evergy Kansas Central, Inc.</b>	
Signature		Signature	
Name: Roger G. Steele		Name: Dana Shipley	
Title: Mayor		Title: Dir, Risk Management	
Date:		Date:	



September 23, 2021  
Trade Number:

**EXHIBIT A - CONFIRMATION LETTER**

This Confirmation Letter (Confirmation) shall confirm the Transaction agreed to on September \_\_\_\_, 2021 between the City of Grand Island, Nebraska, and Evergy Kansas Central, Inc. regarding the Sale/Purchase of the Product under the terms and conditions as follows:

**Seller:** City of Grand Island, Nebraska  
**Buyer:** Evergy Kansas Central, Inc.

**Type of Product:** RECS

Facility:	NAR Tracked Wind Facility
Eligible Renewable Resource Type:	Wind
Geography:	NAR Tracked Wind Facility
Vintage(s):	2022, 2023, 2024 US Green E Wind NAR Tracking
Product Quantity (MWh):	329,137 Renewable Energy Certificates (RECs)
Contract Price (\$/MWh):	\$3.25
Total Contract Price (\$):	\$1,069,695.25
Delivery Deadline:	Upon registration

**Product Specific Terms:**

Applicable Standard:	Green-e and NAR Compliant
Environmental Attributes retained by Seller, if any:	None
Applicable Tracking System:	NAR
Attestation Form [yes, no]	No
Delivery Obligation [Firm, Unit Contingent, Project Contingent]:	Firm

**Monthly Fee:** \$3,000 owed by Seller to Buyer each month for every month of the Delivery Period term to be paid net 30 days from the date of receipt of the monthly fee invoice.

**Fixed Amount:** With respect to each semi-annual calculation period which takes place in March and September of each calendar year (each a “Calculation Period”), the “Fixed Amount” owed by Buyer to Seller shall equal the fixed Contract Price multiplied by the quantity of Renewable Energy Certificates (REC) actually generated from the Facility during such Calculation Period, until the full Product Quantity amount is reached.

**Float Amount:** With respect to each Calculation Period where historical RECs or RECs in excess of maximum Product Quantity amount which are requested by Seller to be sold by Buyer on Seller’s behalf, the “Float Amount” owed by Buyer to Seller shall equal the proceeds of the sold RECs after deduction of all documented NAR registration and transfer fees incurred by Buyer in association with the sale of Seller’s RECs, and reduction of Buyer’s 7.5% fee for the sales of these RECs.

**Payment:** Monthly Fee and Float Amount for historical REC sales: Buyer will invoice Seller on a monthly basis for the Monthly Fee amount and any Float Amount sales proceeds received by Buyer from the third-party REC purchaser (after reduction of all applicable NAR registration and transfer fees and deduction of Buyer’s 7.5% fee) by the tenth (10<sup>th</sup>) business day of the following month. To the extent that the amount owed by Buyer to Seller exceeds the Seller’s Monthly Fee, Buyer shall setoff the Monthly Fee owed by Seller to Buyer against the Monthly settlement amount owed by Buyer to Seller. The monthly invoice

Restricted – Confidential

Internal Use Only

amount shall be due and payable by the relevant party owing such amount no later than 30 days from the monthly invoice issue date.

**Semi-Annual Fixed Amount Settlement and Invoice:** Buyer shall issue a Calculation Period invoice to Seller no later than the tenth (10<sup>th</sup>) business day of each April and October (the “Semi-Annual Settlement Amount”). The Semi-Annual Settlement Amount shall be due and payable by the relevant party owing such amount no later than 30 days from the date of receipt of the Calculation Period invoice.

**Delivery Period:** January 1, 2022 - December 31, 2024 (the “Initial Delivery Period) and then this Confirmation term will evergreen on an annual basis after the Initial Delivery Period until either party provides the other party with at least 90 days written notice prior to expiration of the Initial Delivery Period or the start of the next annual Delivery Period of its desire to terminate this Confirmation at the end of the then-applicable Delivery Period). The parties’ payment obligations will survive the termination of this Confirmation until all amounts owed by one party to the other are paid in full for all purchases and sales executed or entered into prior to the termination of this Confirmation.

**Credit Terms:** If at any time, and from time to time, during the term of this Confirmation (and notwithstanding whether an Event of Default has occurred), either Party (“X”) calculates that the Termination Payment (as defined in Section 9.3 of the Master Agreement) that would be owed by the other Party (“Y”) exceeds Y’s Threshold Amount (as defined below), then X, on any Business Day, may request that Y provide Performance Assurance in an amount equal to the amount by which the Termination Payment exceeds Y’s Threshold Amount (“Party Y Performance Assurance”). Such Party Y Performance Assurance shall be delivered to X within five (5) Business Days of the date of receipt of such request. On any Business Day (but no more frequently than weekly with respect to letters of credit and daily with respect to cash), Y, at its sole cost, may request that such Party Y Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment. In the event that Y fails to provide Party Y Performance Assurance to X pursuant to the terms of this Confirmation within five (5) Business Days, then an Event of Default under Article 8 shall be deemed to have occurred and X will be entitled to seek any and all applicable remedies set forth in Article 8 of the Master Agreement. “Performance Assurance” means collateral in the form of either cash, an irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody’s, in a form acceptable to X, or other security acceptable to X.

Collateral thresholds applicable to both Parties:  
 The lower of: (a) the (i) amount set forth below under the heading “Collateral Threshold” opposite the Credit Rating the relevant date of determination, and if Credit Ratings shall not be equivalent, the lower Credit Rating shall govern and (ii) amount of any dollar limit contained in a guaranty provided, (the “Threshold Amount”), or (b) zero if on the relevant date of determination Party does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default with respect to a Party has occurred and is continuing. If an applicable Credit Rating is associated with a bond issuance, the rating must be the uninsured or underlying rating.

<u>Collateral Threshold</u>	<u>S&amp;P Credit Rating</u>	<u>Moody’s Credit Rating</u>
\$12,500,000	AAA	Aaa
\$10,000,000	AA- to AA+	Aa3 to Aa1
\$7,500,000	A- to A+	A3 to A1
\$5,500,000	BBB+	Baa1
\$3,500,000	BBB	Baa2
\$2,500,000	BBB-	Baa3
\$0	Below BBB-	Below Baa3

Restricted – Confidential

Internal Use Only

This Confirmation is being provided pursuant to and in accordance with Renewable Energy Certificate Purchase and Sale Agreement (the "Master Agreement") between The City of Grand Island, Nebraska and Evergy Kansas Central, Inc. executed on September \_\_\_, 2021, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. The specific terms and conditions of this Transaction shall be deemed accepted unless objected to in writing within 2 Business Days of receipt of this Confirmation.

**Evergy Kansas Central, Inc.**

**City of Grand Island, Nebraska**

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

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

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

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

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

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

**Confidentiality Notice** – The information contained in this facsimile message and the documents accompanying this facsimile message are privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service.

Restricted – Confidential

Internal Use Only

RESOLUTION 2021-241

WHEREAS, the Grand Island Utilities Department developed a Request for Proposals for Renewable Energy Credit (REC) Marketing Services in accordance with City procurement policies; and

WHEREAS, the proposal from Evergy Kansas Central, Inc., was the only proposal to meet the REC marketing requirements; and

WHEREAS, the option agreed upon involves Evergy purchasing the majority of the anticipated RECs and marketing the sale of RECs above this amount and historical REC's for a commission fee.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Renewable Energy Certificate Purchase and Sale Agreement with Evergy Kansas Central, Inc., is hereby approved, and the Mayor is authorized to sign the Agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, September 28, 2021.

\_\_\_\_\_  
Roger G. Steele, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form    ✕ \_\_\_\_\_  
September 24, 2021    ✕ City Attorney