**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This Confidentiality and Non-Disclosure Agreement (this “Agreement”) is entered into as of this

\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2018 (the “Effective Date”), by and between **City of Tacoma, Department of Public Utilities** (“City”) and NAME AND BUSINESS ENTITY STATUS OF OTHER PARTY HERE, doing business in Washington State at BUSINESS ADDRESS (“Recipient”).

**RECITALS**

**WHEREAS,** theCity has issued Request for Proposals PS18-0015F Automated Metering Infrastructure Technology and Services (RFP); and

**WHEREAS**, attached to the RFP are exhibits which contain sensitive information that must be kept confidential; and

**WHEREAS**, Recipient desires to receive and review the RFP in order to submit a proposal in response to the RFP; and

**Whereas,** City is only willing to disclose and release said RFP to Recipient on a confidential basis and only in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual benefits to be derived hereunder, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

“Confidential Information.” In order to prepare a proposal to the RFP, information of a confidential, proprietary and/or systems security sensitive nature will be disclosed by city to the Recipient in the RFP. Specifically this information includes exhibits 10 and 11 from the RFP titled “Communications Infrastructure” and “Substation Location and Fiber Ring Information” respectively. For purposes of this Agreement, the two exhibits shall be deemed **“Confidential Information."** Further, said Confidential Information shall also include any information, data, documents, records and materials marked or otherwise identified as “confidential” or “proprietary,” and/or that should reasonably have been understood by the Recipient because of legends or other markings (e.g., marked confidential), the circumstances of disclosure, or the nature of the information itself, to be proprietary and confidential to City.

**“**Confidential Information” shall not include information that: (i) was known to the Recipient without breach of any contractual, fiduciary or other obligations prior to disclosure by City; (ii) is part of the public domain on the date of disclosure; (iii) can be demonstrated to have been independently developed by Recipient without reference to the Confidential Information, or (iv) is required to be disclosed by operation of law, or pursuant to order of a governmental agency with jurisdiction.

1. Permissible Use of Confidential Information. Recipient expressly agrees to:
2. Use the Confidential Information for the **sole** purpose of preparing a proposal in response to the RFP;
3. Restrict access to the Confidential Information solely to Recipient’s employees with an express need to know; AND
4. Hold in confidence and protect the Confidential Information from disclosure to anyone not authorized to receive, view, or use said information, which duty shall include taking reasonable precautions, but in no event less than due care, to prevent disclosure, publication, reproduction or dissemination of the Confidential Information to anyone not authorized to receive or view same.
5. Prohibited Use. Recipient shall **not** use any Confidential Information disclosed by City, whether such disclosure is intentional or unintentional, for:
6. Its own or any third party’s commercial advantage or benefit without the prior written approval of an authorized City representative in each instance;
7. Any marketing purposes not expressly contemplated by the Project; and/or
8. In violation of commercial and/or ethical standards applicable to Recipient’s industry.
9. Term. This Agreement terminates the earlier of four (4) years after the Effective Date or termination by City upon thirty (30) days' written notice thereof. The obligations of Recipient with respect to Confidential Information received prior to termination of this Agreement, as well as City’s remedies hereunder, will survive said termination for a period of twenty-four (24) months.
10. No Ownership or License. Disclosure of Confidential Information by City hereunder shall not grant the Recipient any right or license to use the Confidential Information except as expressly set forth herein. Upon request, Recipient shall return all Confidential Information, including all copies thereof in whatever form, to City within ten (10) days following receipt of such request or shall destroy such information and copies and promptly provide City with written certification of such destruction.
11. Breach and Remedies. The Parties agree that the Confidential Information is a unique and valuable asset of City and that City will be irreparably damaged if Recipient breaches the terms of this Agreement. Without limiting City’s right to damages for breach of this Agreement, the Parties further agree that in the event of any breach or threatened breach of this Agreement, City shall be entitled (in addition to any and all other remedies) to injunctive relief, specific performance and other equitable remedies without proof of monetary damages or the inadequacy of other remedies, and without necessity of posting a bond or other security.
12. No commitment for future business relationship(s) or contract(s). Nothing contained in this Agreement shall be construed as creating any obligation or expectation on the part of either party to enter into a business relationship or other contract with the other party, or an obligation to refrain from entering into a business relationship with any third party. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment relationship between the parties, it being understood that the parties are independent contractors vis-à-vis one another.
13. Waiver. Failure by City to enforce or exercise any provision, right or option contained in this Agreement will not be construed as a present or future waiver of such provision, right or option.
14. Governing Law and Venue. This Agreement shall be governed by and construed under the laws of the State of Washington. Each Party hereby irrevocably consents to the jurisdiction and venue of any state or federal court located in Pierce County, Washington, with regard to any legal or equitable action or proceeding relating to this Agreement.
15. Integration and Severability. This Agreement represents the entire understanding between the Parties regarding the subject matter hereof, and the terms and conditions of this Agreement supersede the terms of any prior agreements or understandings, express or implied, written or oral. The provisions of this Agreement are to be considered as severable, and in the event that any provision is held to be invalid or unenforceable, the Parties intend that the remaining provisions will remain in full force and effect to the extent possible and in keeping with the intent of the Parties.

**IN WITNESS WHEREOF**, the Parties accept and agree to the above terms and conditions and by their signature below represent and warrant their authority to execute this Agreement.

 Recipient

|  |  |
| --- | --- |
| **CITY OF TACOMA, Department of Public Utilities** | **NAME OF OTHER PARTY** |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Printed Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Printed Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |
| Approved as to Form: |  |
|  |  |
| Deputy/Assistant City Attorney |  |