

NON-DISCLOSURE AGREEMENT

This is an Agreement between Proposer, identified below, and the City and County of Denver, acting by and through its Board of Water Commissioners (“Board”).

1. The Board is the owner of certain confidential and/or security-sensitive information relating to its water system and components thereof (“Confidential Information”), which the Board represents is not subject to public inspection under C.R.S. § 24-72-201 *et. seq.*, and which the Board has taken and continues to take steps to protect as confidential and restricted.
2. The parties recognize that it may be necessary for the Board to provide information, including but not limited to Confidential Information, to Proposer for the purpose of Proposer preparing a bid or proposal for t Moffat Collection System, Ranch Creek Canal Improvements, Phase 2 - Cub Creek Chute to 54-inch Pressure Pipe (“Contract”) and potentially for Proposer to perform the work required by the Contract. Proposer acknowledges that it may receive Confidential Information from a contractor working on behalf of the Board and that this Agreement also will apply to such Confidential Information.
3. The Confidential Information includes any drawings, electronic files, studies, etc. that the Board provides to Proposer before or during the term of the Contract, as well as any of the above items developed by Proposer for the Board during the term of the Contract. Any other information provided by either party shall be labeled as or identified as confidential in order to be protected under this Agreement.
4. The Board, in its sole discretion, may provide to Proposer the Confidential Information in the form of the Board’s choosing.
5. If the Board provides or Proposer requests the Confidential Information in a format requiring particular software, it is understood that Proposer will secure at its sole cost any and all necessary software licenses, authorizations or other intellectual property rights for the transfer and use of the Confidential Information.
6. As part of this Agreement, the Board may permit Proposer to visit one or more Board facilities according to a schedule to be determined by the Board. Proposer is prohibited from taking any pictures or video or making any electronic recordings of any kind during its visit(s) to the Board’s facilities without the prior approval of the Board’s site or area supervisor. Proposer acknowledges that it may learn information about and receive documentation about the Board’s facilities during the visit(s), and Proposer agrees that such information and documentation will be considered Confidential Information under this Agreement.

7. Proposer shall hold and use the Confidential Information only for the purposes of preparing a bid or proposal for the Contract, if Proposer so chooses, and for performing the work required by the Contract if selected as the successful Proposer. Proposer shall limit disclosure of the Confidential Information to only its employees and subcontractors who have a need to know the Confidential Information. Proposer will not use or derive any direct or indirect benefit from any information provided by the Board, or from any part thereof, without the prior written consent of the Board; this prohibition will survive the termination of this Agreement. Proposer shall take reasonable steps to ensure that anyone to whom it provides the Confidential Information complies with the terms of this Agreement.
8. Proposer shall not be liable to the Board for disclosure of any information, including but not limited to Confidential Information, if the information:
 - a. Was in the public domain at the time it was disclosed, or
 - b. Becomes part of the public domain without breach of this Agreement, or
 - c. Is obtained by Proposer from a third party that is lawfully in possession of such information and is not in violation of any contractual or legal obligation to the Board or other third party with respect to such information, or
 - d. Is disclosed with the prior written approval of the Board, or
 - e. Was independently developed by Proposer, or
 - f. Is disclosed pursuant to the provisions of a court order or subpoena, provided that the Board has had an opportunity to object or intervene in the matter.
9. The provisions of this Agreement shall supersede the provisions of any inconsistent language that may be affixed to any information provided by the Board, and the inconsistent provisions of any such language shall be without any force or effect during the term of this Agreement.
10. Confidential Information and any other information or materials provided by the Board to Proposer shall be returned to the Board, or to the Board's contractor that supplied the information, (1) at such time as it is no longer required for the purposes described in this Agreement or (2) upon request of the Board at any time. Additionally, upon request Proposer will provide an affidavit of destruction of any copies or extracts of the Confidential Information in whole or in part, or of other material or formats that contain the Confidential Information.
11. If Proposer loses or makes unauthorized disclosure of any of the Board's information protected by this Agreement, it shall notify the Board immediately and take all steps reasonable and necessary to retrieve the lost or improperly disclosed information.
12. The standard of care for protecting Board information provided to Proposer will be at least that degree of care Proposer uses to prevent disclosure, publication or dissemination of its own proprietary information, provided that degree of care is at least reasonable.
13. Proposer shall not be liable to the Board for the inadvertent or accidental disclosure of any of the Board's information protected by this Agreement if such disclosure occurs despite the exercise of at least the same degree of care as Proposer normally takes to protect its own proprietary information, provided that degree of care is at least reasonable.

14. If Proposer receives a request by a third party, under the Colorado Open Records Act (C.R.S. § 24-72-201 et. seq.) or otherwise, to provide any information it has received pursuant to this Agreement, it shall treat all such information as confidential or otherwise protected from disclosure, unless it is permitted to be disclosed under this Agreement. In the event of such a request, Proposer shall notify the Board in writing as soon as reasonably possible.
15. In providing any information under this Agreement, the Board makes no warranty or representations, either express or implied, as to the information's adequacy, sufficiency, or freedom from defect of any kind, including freedom from any patent infringement that may result from the use of such information, nor shall the Board incur any liability or obligation whatsoever by reason of providing such information.
16. This Agreement contains the entire agreement relative to the protection of information to be provided by the Board for the purposes described in this Agreement and supersedes all inconsistent prior or contemporaneous oral or written understandings and agreements regarding this issue. This Agreement shall not be modified or amended, except by an amendment executed by the Board and Proposer.
17. Nothing contained in this Agreement, by express grant, implication, estoppel or otherwise, shall create in Proposer any ownership, right, title, interest, or license in or to the documents, information, inventions, patents, technical data, computer software, or software documentation of the Board.
18. Notwithstanding that the Board may provide information for the purposes described in this Agreement, the Board does not waive any claim that the information it provides is privileged, proprietary, and/or confidential.
19. Nothing contained in this Agreement shall grant to Proposer the right to make commitments of any kind for or on behalf of the Board without the prior written consent of the Board.
20. Nothing contained in this Agreement shall be construed as restricting the Board's right to restrain use or dissemination of the Board's information in accordance with applicable federal, state, or local law or regulation, or at common law.
21. Nothing contained in this Agreement shall require Proposer to submit a bid or proposal to the Board for the Contract.
22. In the event the Board selects Proposer for the Contract, this Agreement shall remain in effect for the term of the Contract at a minimum and, additionally, for as long as the Proposer is in possession of the Board's information that is protected by this Agreement. In the event the Board does not select Proposer for the Contract, this Agreement shall remain in effect for as long as the Proposer is in possession of the Board's information that is protected by this Agreement.

23. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado with venue for any legal action in the District Court for the City and County of Denver.

To be completed by Proposer:

Name of Proposer: _____
(Print name legibly)

By execution below, signer certifies that s/he is authorized to accept and bind Proposer to the terms of this Agreement.

By: _____

Date: _____

Title: _____