

## NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

### **BACKGROUND:**

The DuPage Water Commission (the “Commission”) has issued an Invitation for Bidder’s Proposals for the Contract entitled “Contract for the Construction of Inter-Tie Valve Vault Improvements—Contract ROV-2/25” (the “Project”).

The Company executing this Affidavit (the “Company”) is considering submitting a bid for the Project (the “Bid”).

The Commission has agreed to provide the Company with information and documents that the Commission considers to be confidential (the “Confidential Information”) for the sole purpose of preparation of the Bid by the Company.

The Commission will not provide the Confidential Information to the Company without this Affidavit, and the Company is delivering this Affidavit to the Commission to induce the Commission to provide the Confidential Information to the Company.

The Confidential Information covered by this Affidavit presents safety and security concerns for the integrity of the Commission’s water distribution system. The Confidential Information is prepared for or references the Project and contains detailed specifications for the Project including, but not limited to, diagrams, schematics, drawings, photographs, specifications, test analyses, or other documents related to the Project.

**NOW, THEREFORE**, the Company agrees, acknowledges, covenants, warrants, and represents to the Commission as follows:

1. The Background set forth above is hereby incorporated herein.
2. The person executing this Affidavit on behalf of the Company will be responsible for each copy of the Bid Package for the Project or other Confidential Information that is received. If additional copies are needed, the Company will make such copies as are necessary for the preparation of the Bid. Any copy, note, and/or drawing in written or tangible form that is created from Confidential Information shall be considered Confidential Information for the purposes of this Affidavit. The Company must maintain control of all copies, notes, and/or drawings constructed through or about Confidential Information or other information provided by the Commission, through procedures that include recording, tracking, collection, and destruction of all such information.
3. The Company agrees to keep the Confidential Information in confidence and to disclose the Confidential Information only to those employees, subcontractors, consultants, and affiliates of the Company who are directly involved in preparing the Bid. In connection with this Affidavit, “to disclose” shall mean to divulge, reveal, describe, summarize, paraphrase, quote, transmit, or otherwise communicate information, whether or not pursuant to request, interrogatory, or process.
4. Any person to whom the Company desires to grant access to the Confidential Information, including employees, subcontractors, consultants, and affiliates of the

Company, as referenced in Section 3 above, must agree individually and expressly to the terms of a non-disclosure affidavit prescribed by the Commission. If any Confidential Information is included in the Bid, then those portions of the Bid will be considered Confidential Information.

5. The Company must return all Confidential Information received from the Commission within five business days of the Commission's request for return. The Company must collect and destroy all Confidential Information that was created by the Company and/or its subcontractors within five business days of the Commission's request for destruction.
6. The Company must provide immediate written notice to the Commission of any actual requirement, including a copy of any written request, or potential requirement of any court or agency to disclose Confidential Information received by the Company. The Company will cooperate with the Commission's efforts to seek a protective order or other legal relief limiting such disclosure.
7. The Company will not be liable for disclosing Confidential Information resulting from judicial decree or government regulation, provided the Company gives prompt and immediate notice to the Commission and discloses the Confidential Information in accordance with any related protective order which the Commission may obtain in response to such decree or regulation.
8. The Company acknowledges that a violation of any of the provisions of this Affidavit will cause irreparable harm and injury to the Commission and the Commission will be entitled, in addition to any other rights and remedies it may have at law or in equity, to an injunction enjoining and restraining the Company from doing or continuing to do any such act and any other violations or threatened violations of this Affidavit.
9. This Affidavit will be construed under and in accordance with the laws of the State of Illinois.
10. All notices required to be given under this Affidavit must be given in writing and must be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to the Company or to the Commission at their respective addresses set forth below, as appropriate. Such notice is considered to have been given on the date of delivery, if delivered by hand, and on the second business day after mailing, if given by mail. The Commission or the Company may, from time to time, change the address to which notices will be sent by giving notice to the Company or the Commission, respectively, in the manner provided in this paragraph.
11. The obligations of the Company shall not be assigned by the Company, in whole or in part, without the prior written consent of the Commission and any purported assignment of same shall be void. This Affidavit shall be binding on successors and permitted assignees of the Company.

12. This Affidavit is the entire agreement by the Company with respect to nondisclosure of Confidential Information pertaining to the conduct of business stated above and supersedes all prior agreements and understandings with respect to this subject. This Affidavit may be amended only in writing and with the written prior approval of the Commission.
13. The Company shall perform its obligations hereunder without charge to the Commission.
14. For security reasons, the Company's obligation not to disclose the Confidential Information shall never expire, regardless of whether the Company chooses to bid on the Project.
15. The effective date of this Affidavit is the date that it is signed by the Company.
16. The person signing this Affidavit on behalf of the Company (a) shall be the responsible person in the Company for controlling access to all Confidential Information provided under this Affidavit, and (b) is authorized by the Company to bind the Company by his or her signature hereto.

\_\_\_\_\_  
Print Name and Title of Authorized Employee

\_\_\_\_\_  
Signature of Authorized Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Company

\_\_\_\_\_  
Print Address of Company

Notarization: \_\_\_\_\_

ADDRESS OF THE COMMISSION FOR PURPOSES OF SECTION 10 ABOVE IS AS FOLLOWS:

General Manager  
DuPage Water Commission  
600 East Butterfield Road  
Elmhurst, Illinois 60126-4642