

## **NON-DISCLOSURE AGREEMENT**

THIS NON-DISCLOSURE AGREEMENT (hereinafter “Agreement”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the Emerald Coast Utilities Authority, whose administrative offices are located at 9255 Sturdevant Street, Pensacola, Florida 32514 (hereinafter either “ECUA” or “Disclosing Party”) and \_\_\_\_\_, located at \_\_\_\_\_ (hereinafter either the “Recipient” or “Receiving Party”), as follows:

WHEREAS ECUA has issued a Request for Proposals for Agent-Broker Services for Commercial Insurances and Bonds which is known as RFP No. 2017-11 (hereinafter “RFP”);

WHEREAS the scope of that RFP includes Privacy & Network Liability insurance, Crime insurance, as well as other specified commercial insurances and bonds;

WHEREAS Florida law recognizes that risk analysis information relative to security threats to data, information, and information technology resources of ECUA is confidential and exempt from public disclosure;

WHEREAS Florida law recognizes that ECUA’s internal policies and procedures to ensure the security of data and information technology resources which, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data, information, or information technology resources are confidential and exempt from public disclosure;

WHEREAS Florida law provides that building plans, blueprints, schematic drawings, and diagrams of ECUA buildings and facilities are exempt from public disclosure;

WHEREAS in order to fully respond to the RFP, certain information regarding security threats to data, information, and information technology; internal policies and procedures to ensure the security of data and information technology resources; and

building plans and schematics must be disclosed to potential responders to the RFP, despite the fact that this information is exempt from public disclosure and should not be made known to the general public;

WHEREAS Florida law recognizes that ECUA may disclose and distribute documents exempt from public disclosure, in order to comply with competitive bidding requirements, on the condition that those receiving that exempt information must maintain its exempt and confidential status;

WHEREAS the Recipient is interested in receiving documents and information exempt from public disclosure under the terms set forth below for the sole purpose of responding to the RFP;

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Definition of Confidential Information.

(a) For purposes of this Agreement, "Confidential Information" means documents and information relative to security threats to data, information, and information technology resources of ECUA; internal policies and procedures to ensure the security of data and information technology resources, which could facilitate the unauthorized modification, disclosure, or destruction of data, information, or information technology resources; as well as building plans, blueprints, schematic drawings, and diagrams of certain facilities. The term "Confidential Information" also includes, but is not limited to, any data or information regarding security measures, data security, computer configurations, security countermeasures, building plans or schematics delineating the locations and security measures to safeguard various products and chemicals used by ECUA. Confidential Information need not be novel, unique, patentable, copyrightable, or constitute a trade secret in order to be designated Confidential Information.

(b) Notwithstanding anything in the foregoing to the contrary,

Confidential Information shall not include information which: (i) was known by the Receiving Party prior to receiving the Confidential Information from ECUA; (b) becomes rightfully known to the Receiving Party from a third-party source not known (after diligent inquiry) by the Receiving Party to be under an obligation to Disclosing Party to maintain confidentiality; (c) is or becomes publicly available through no fault of or failure to act by the Receiving Party in breach of this Agreement; (d) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation, although the requirements of paragraph 4 hereof shall apply prior to any disclosure being made; and (e) is or has been independently developed by employees, consultants or agents of the Receiving Party without violation of the terms of this Agreement or reference or access to any Confidential Information.

2. Disclosure of Confidential Information.

As part of the RFP process, ECUA will disclose Confidential Information to the Receiving Party. If Confidential Information is in written form, ECUA shall label or stamp the materials with the word “Confidential” or some similar language. If Confidential Information is transmitted orally, ECUA shall orally communicate that the information constitutes Confidential Information. The Receiving Party will: (a) limit disclosure of any Confidential Information to its directors, officers, employees, agents or representatives (collectively “Representatives”) who have a need to know such Confidential Information in connection with the RFP to which this Agreement relates, and only for that purpose; (b) advise its Representatives of the confidential nature of the Confidential Information and of the obligations set forth in this Agreement and require such Representatives to keep the Confidential Information confidential; (c) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties (except as otherwise provided for herein).

3. Use of Confidential Information.

The Receiving Party agrees to use the Confidential Information solely in connection with the contemplated business relationship between the Parties set forth in the RFP and not for any purpose other than as authorized by this Agreement, without the prior written consent of an authorized representative of the ECUA. No other right or license, whether expressed or implied, in the Confidential Information is granted to the Receiving Party hereunder. Title to the Confidential Information will remain solely in ECUA. All use of Confidential Information by the Receiving Party shall be for the benefit of ECUA and any modifications and improvements thereof by the Receiving Party shall be the sole property of ECUA.

4. Compelled Disclosure of Confidential Information.

Notwithstanding anything in the foregoing to the contrary, the Receiving Party may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or similar method, provided that the Receiving Party promptly notifies, to the extent practicable, ECUA in writing of such demand for disclosure so that ECUA, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information. The Receiving Party agrees that it shall not oppose and shall cooperate with efforts by, to the extent practicable, ECUA with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if ECUA is unable to obtain or does not seek a protective order and the Receiving Party is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.

5. Term.

This Agreement shall remain in effect (a) for six (6) months or until the ECUA Board enters into a contract pursuant to the RFP (in the event Recipient is either not awarded or does not enter into a contract), whichever is shorter; or (b) for the Recipient

who receives and enters into a contract to perform the services solicited under this RFP, until all work associated with the RFP has been completed by Recipient or the contract is otherwise terminated. Notwithstanding the foregoing, the Parties' duty to hold in confidence Confidential Information that was disclosed during term shall remain in effect indefinitely.

6. Return of Confidential Information.

Receiving Party shall immediately return and redeliver to ECUA all tangible material embodying the Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials ("Notes") (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (i) the award of a contract for Brokerage Services for Specified Commercial Insurance and Bonds by the ECUA Board to some other party; (ii) the termination of this Agreement; or (iii) at such time as the Disclosing Party may so request. Alternatively, the Receiving Party, with the written consent of the Disclosing Party may (or in the case of Notes, at the Receiving Party's option) immediately destroy any of the foregoing embodying Confidential Information (or the reasonably nonrecoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Receiving Party supervising the destruction.

7. Remedies.

Both Parties acknowledge that the Confidential Information to be disclosed hereunder is of a sensitive, unique, and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information and could cause unmeasurable damages to ECUA and its ratepayers. The damages to Disclosing Party that would result from the unauthorized dissemination

of the Confidential Information would be impossible to calculate. Therefore, both Parties hereby agree that the Disclosing Party shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. Disclosing Party shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

8. Notice of Breach.

Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by Receiving Party or its Representatives, or any other breach of this Agreement by Receiving Party or its Representatives, and will cooperate with efforts by the Disclosing Party to help the Disclosing Party regain possession of Confidential Information and prevent its further unauthorized use.

9. Warranty.

NO WARRANTIES ARE MADE BY EITHER PARTY UNDER THIS AGREEMENT WHATSOEVER. The Parties acknowledge that although they shall each endeavor to include in the Confidential Information all information that they each believe relevant for the purpose of the evaluation of the RFP, the Parties understand that no representation or warranty as to the accuracy or completeness of the Confidential Information is being made by either party as the Disclosing Party. Neither Party hereto shall have any liability to the other party nor to the other party's Representatives resulting from any use of the Confidential Information except with respect to disclosure of such Confidential Information in violation of this Agreement.

10. Miscellaneous.

(a) This Agreement constitutes the entire understanding between the

Parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the Parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by the Party against whom enforcement of such modification is sought.

(b) The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of Florida applicable to contracts made and to be wholly performed within such state, without giving effect to any conflict of laws provisions thereof. The Federal and State courts located in Escambia County, Florida shall have sole and exclusive jurisdiction over any disputes arising under the terms of this Agreement.

(c) Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

(d) Although the restrictions contained in this Agreement are considered by the Parties to be reasonable for the purpose of protecting the Confidential Information, if any such restriction is found by a court of competent jurisdiction to be unenforceable, such provision will be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement will be enforced as if such provision was not included.

(e) Any notices or communications required or permitted to be given hereunder may be delivered by hand, deposited with a nationally recognized overnight carrier, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other party first indicated above (or such other addressee as may be furnished by a Party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of delivery by a nationally recognized overnight carrier, on the next business day following dispatch and (c) in the

case of mailing, on the seventh business day following such mailing.

(f) This Agreement is personal in nature, and neither party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other Party, which consent will not be unreasonably withheld. All obligations contained in this Agreement shall extend to and be binding upon the Parties to this Agreement and their respective successors, assigns and designees.

(g) Paragraph headings used in this Agreement are for reference only and shall not be used or relief upon in the interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

EMERALD COAST UTILITIES  
AUTHORITY

Receiving Party

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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