

## **Attachment C. Non-Disclosure Agreement (Contractor)**

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between the District of Columbia Government (“District”) acting by and through the Public Service Commission of the District of Columbia (“Commission”), and \_\_\_\_\_ (the “Contractor”).

### **RECITALS**

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) following the solicitation for **Perform Independent Manhole Inspections and Provide Technical Auditing And Consulting Services On Pepco’s Manhole Inspection and Underground Electrical Distribution System Remediation Program**; and

**WHEREAS**, in order for the Contractor to perform the work required under the Contract, it will be necessary for the Commission at times to provide the Contractor and the Contractor’s employees, agents, and subcontractors (collectively the “Contractor’s Personnel”) with access to certain information the Commission deems confidential information (the “Confidential Information”).

**NOW, THEREFORE**, in consideration of being given access to the Confidential Information in connection with the solicitation and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such, “Confidential Information” means (1) any and all information provided by or made available by the Commission to the Contractor in connection with the Contract and (2) any and all personally identifiable information (PII) that is provided by a person or entity to the Contractor in connection with this Contract. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the Commission agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the Commission in relation to the Contract.

2. The Contractor shall not, without the Commission’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information except for the sole and exclusive purpose of performing under the Contract. The Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who are bound by confidentiality obligations at least as restrictive as those set forth in this Agreement. The names of such personnel are attached hereto and made a part hereof as **Attachment C-2**. Contractor shall update **Attachment C-2** by adding additional names (whether Contractor’s Personnel or a subcontractor’s personnel) as needed, from time to time.

3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the Contract or will otherwise



have a role in performing any aspect of the Contract, the Contractor shall first obtain the written consent of the Commission to any such dissemination. The Commission may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.

4. The Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, adopt or establish operating procedures and physical security measures, and take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.

5. The Contractor shall promptly advise the Commission in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor's Personnel or the Contractor's former Personnel. Contractor shall, at its own expense, cooperate with the Commission in seeking injunctive or other equitable relief against any such person(s).

6. The Contractor shall, at its own expense, return to the Commission all Confidential Information in its care, custody, control or possession upon request of the Commission or on termination of the Contract.

7. A breach of this Agreement by the Contractor or the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the Commission.

8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the Commission and that monetary damages may be inadequate to compensate the Commission for such breach. Accordingly, the Contractor agrees that the Commission may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the District of Columbia Courts. The Commission's rights and remedies hereunder are cumulative and the Commission expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the Commission suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the Commission from and against any such losses, damages, liabilities, expenses, and costs.

9. The parties further agree that:

- a. This Agreement shall be governed by the laws of the District of Columbia
  - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the Commission;
  - c. The Commission makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
  - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
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- e. Signatures exchanged electronically are effective for all purposes hereunder to the same extent as original signatures;
- f. The Recitals are not merely prefatory but are an integral part hereof; and
- g. The effective date of this Agreement shall be the same as the effective date of the Agreement entered into by the parties.

**IN WITNESS WHEREOF**, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

Contractor:  
\_\_\_\_\_

Public Service Commission of the District of  
Columbia  
\_\_\_\_\_

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

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

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

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

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

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

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

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





**C-3 NON-DISCLOSURE AGREEMENT**

**CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL INFORMATION**

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the Public Service Commission of the District of Columbia (“Commission”) and \_\_\_\_\_ (“Contractor”) dated \_\_\_\_\_, 2022 (“Agreement”) is attached hereto and is hereby returned to the Commission in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, HAVING MADE DUE INQUIRY.**

DATE: \_\_\_\_\_

NAME OF CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

TITLE: \_\_\_\_\_  
(Authorized Representative and Affiant)

