

CONFIDENTIALITY AGREEMENT

This Agreement is entered into by and between the Lower Colorado River Authority (LCRA) and _____, as Parties, for the purpose of allowing the Parties to share certain information that is exempt from disclosure under the Texas Public Information Act, Tex. Gov. Code Ch. 552, (the Act), including without limitation confidential and privileged information relating to the work between Contractor and LCRA. This Agreement remains in effect for the duration of the Contract entered into between the Parties.

The Parties hereby agree that information shall be treated as confidential and privileged by the Parties if:

1. It is identified by a Party as confidential or privileged (Protected Information) and
2. shared by the Party who owns or originates the Protected Information (Originating Party) with the other Party (Custodial Party),

regardless of the medium in which the Protected Information may be stored or transferred (including electronically). Where feasible, Protected Information shall be marked in an obvious manner as "CONFIDENTIAL" Or "PRIVILEGED," as applicable.

It is understood and agreed that Protected Information shared by the Parties under this Agreement is provided in furtherance of LCRA's statutory and constitutional authority to provide electric utility services. It is further agreed that any Protected Information shared by the Parties under this Agreement is provided in connection with the performance of a separate contract under which LCRA is carrying out its statutorily and constitutionally authorized duties. Use of Protected Information is limited to such activities.

Release to the Custodial Party of such information for these limited purposes is not to be construed as any waiver of any exceptions to the Act's disclosure requirements that may apply to Protected Information. The Custodial Party agrees that if it receives any request for Protected Information it shall promptly, but in any event within no more than three (3) calendars days, notify and provide the Originating Party a copy of the request. The Originating Party shall bear the responsibility and expense for asserting its objections and exceptions under the Act to disclosure of its Protected Information. The Custodial Party shall reasonably cooperate with the Originating Party in the assertion and presentation of appropriate exceptions or objections to release under the Act and shall bear sole responsibility and expense for asserting its own confidentiality interests, if any, in the Protected Information. If requested by the Originating Party, the Custodial Party shall actively pursue (at the Originating Party's expense) the appropriate exceptions or objections and endeavor to provide the Originating Party the opportunity to intervene to prevent the release or disclosure of the Protected information in accordance with applicable law.

In the event a Party is directed or ordered by the Texas Attorney General or a court of competent jurisdiction to release Protected Information, that Party shall notify the other Party within three (3) business days of such direction or order. If either Party decides to pursue such appeals or other legal remedies, the Parties shall cooperate to the fullest extent possible in such proceedings until all appeals or other legal remedies to

protect such Protected Information are exhausted or the party which decided to pursue an appeal or other legal remedy decides to cease that pursuit. In pursuing such appeals and/or other legal remedies, the Party deciding to pursue the appeal or other legal remedy shall bear the responsibility and expense of preparing pleadings, arguments, and other documentation and support necessary to the assertion of its position.

In consideration of having access to Protected Information under this Agreement, the Parties hereby agree to the following:

- (A) No copies will be made of any Protected Information provided by the Originating Party without the Originating Party's written consent, which will not be unreasonably withheld. The Custodial Party shall keep a record of all copies made of Protected Information and all individuals or entities provided such copies in accordance with the terms herein, and such record shall be available for review by the Originating Party upon request during the Custodial party's normal business hours.
- (B) All data, information, plans, analysis, recommendations, or other documentation of any kind or nature related to or derived from Protected Information shall be considered and treated as Protected Information under the terms of this Agreement; where feasible and appropriate for the media, all such Protected Information shall be clearly marked or otherwise identified as "CONFIDENTIAL."
- (C) After completion of the specific contract in connection with which the Protected Information was disclosed to the Custodial Party, all copies of Protected Information shall be returned to the Originating Party immediately or immediately destroyed by the Custodial Party, said destruction being certified in writing to the Originating Party by the Custodial Party's project manager. Under no circumstances shall Protected Information be considered the records of the Custodial Party or retained by it.
- (D) Protected Information shall not be divulged to any agent, representative, consultant, contractor, or any other third party without the written consent of the Originating Party unless all appeals and other legal remedies to protect Protected Information have been exhausted or waived by the Originating Party.
- (E) Protected Information shall only be revealed, communicated, and used as absolutely necessary for the purposes of this Agreement, and only to the extent necessary to fulfill the purposes of this Agreement, and according to these terms. Each of the Parties' officers, employees, agents, representatives, consultants, contractors, or any third party (authorized by the Parties to receive Protected Information) who receives any Protected Information shall be bound by the terms of this Agreement. All persons who have access to Protected Information under the terms of this Agreement shall execute the Confidentiality Acknowledgment, attached as Attachment A.
- (F) The Custodial Party shall provide the Originating Party with a final copy of all reports, analysis, and conclusions made from the use of Protected Information provided to the Custodial Party.

This Agreement constitutes the entire agreement and understanding of the parties regarding the subject of this Agreement and shall be binding and inure to the benefit of the successors and assigns of the Parties; provided, however, that a Party may not assign all or any part of this Agreement without the written consent of the other Party. Money Damages would not be a sufficient remedy for any breach of the Agreement by a Party or its representatives, and a non-breaching Party shall be entitled to specific performance and injunctive relief as remedies for any such breach. Such remedies shall not be deemed the exclusive relief as remedies for any such breach of this Agreement. THIS CONFIDENTIALITY AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICTS OF LAWS PRINCIPLES.

Any substantial alteration, modification, or waiver of this Agreement, or any portion thereof, must be agreed upon in writing and executed by the authorized representatives of both parties. If any provision of this Agreement is held by a governmental agency or court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

Signed and executed by authorized representatives of the Parties this ____ day of _____, 200__.

Lower Colorado River Authority

Contractor

Title

Title

Date: _____

Date: _____

CONFIDENTIALITY ACKNOWLEDGMENT

I hereby agree to abide by the terms and requirements of the CONFIDENTIALITY AGREEMENT executed on _____, by the Lower Colorado River Authority (LCRA) and _____.

SIGNATURE: _____

NAME PRINTED: _____

TITLE: _____

EMPLOYER: _____

ADDRESS: _____

DATE: _____