



Issue: RESOLUTION 2022-021 – NDA AUTHORIZATION

Date: February 10, 2022

Submitted By: Doug Colvin
Assistant City Administrator – Director, Nixa Utilities and Public Works

Background

The Missouri Joint Municipal Electric Utility Corporation (MJMEUC), the electric corporation arm of the Missouri Public Utility Alliance (MPUA) is in the process of purchasing the 69Kv assets we recently sold to Gridliance. To do this, we are working with their legal counsel and engineering consultant to assist with accurate information about the system and to develop new agreements necessary for operations by both parties. Some of the information that needs to be shared is confidential and/or protected for among other things, security reasons.

Analysis

Upon the sale of the 69 Kv transmission assets to Gridliance, we entered into agreements with them for certain maintenance functions, how we handled pole attachments, substation rent, etc. These agreements included a Master Services Agreement, Pole Attachment Agreement and Substation Agreement.

Since that time, MJMEUC is working to acquire those assets and has hired TFB Engineering, LLC (TFB) to assist them. The sale process is not exactly amicable between them and TFB has reached out to us for information that Gridliance doesn't seem to have available. The information exchange is necessary for us to develop new, similar, replacement agreements that will come before you in the coming weeks.

Until then, we need to share information which qualifies as proprietary or confidential with TFB Engineering, LLC. Therefore, to do this while simultaneously protecting any confidential or protected information we wish to enter into a Non-Disclosure Agreement (NDA).

The attached Resolution authorizes the City Administrator to execute the attached NDA. The NDA has been reviewed by Mr. Woodman.

Recommendation

Staff recommendation is to pass Resolution #2022-021.

RESOLUTION NO. 2022-021

A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A NON-DISCLOSURE AGREEMENT WITH TFB ENGINEERING, LLC.

WHEREAS the Missouri Joint Municipal Electric Utility Corporation ("MJMEUC"), is in the process of purchasing the 69Kv electric assets which the City sold to Gridliance; and

WHEREAS as part of the due diligence for such acquisition, MJMEUC has been working with the City, through its engineering consultant, TFB Engineering, LLC, to evaluate portions of the 69Kv electric assets; and

WHEREAS some of the information held by the City is confidential as it relates to the security of the City's electric distribution system; and

WHEREAS to assist with MJMEUC's acquisition of the above referenced electric assets, the City Council desires to enter into a non-disclosure agreement with TFB Engineering, LLC.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:

SECTION 1: The City Administrator, or designee, is hereby authorized to execute the "Non-Disclosure Agreement" ("Contract") attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A," with TFB Engineering, LLC. Said Contract shall be in substantially similar form as the document attached hereto as "Resolution Exhibit A." The City Administrator and the officers of the City are hereby authorized to do all things necessary or convenient to carry out the terms and intent of this Resolution.

SECTION 2: This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

[Remainder of page intentionally left blank. Signatures follow on next page.]

RESOLUTION NO. 2022-021

ADOPTED BY THE CITY COUNCIL THIS 14th DAY OF FEBRUARY 2022.

ATTEST:

CITY CLERK

PRESIDING OFFICER

APPROVED BY THE MAYOR.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY

DATE OF APPROVAL

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT ("Agreement"), entered into by and between TFB Engineering, LLC, created and existing under the laws of the State of Missouri and contractor for the Missouri Joint Municipal Electrical Utility Commission ("MJMEUC") a body public an corporate organized and existing under the laws of the State of Missouri (hereinafter collectively referred to as the "Receiving Party"), and the City of Nixa, Missouri a Constitutional Charter City, with its principle office located at 715 W. Mt. Vernon St., Nixa, Missouri 65714 (hereinafter referred to as the "Disclosing Party").

WHEREAS the Disclosing Party has developed and/or now possess certain non-public, confidential, and proprietary information; and

WHEREAS it may be necessary for the Disclosing Party to expose or submit to the Receiving Party portions of its non-public, confidential, or proprietary information in order for the parties to engage in a business relationship.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration receipt of which is hereby acknowledged, the parties agree as follows:

1. Confidential Information. For purposes of this Agreement, "Confidential Information" means all non-public, confidential or proprietary information disclosed before, on or after the Effective Date, relating to the electrical transmission line facilities located in and through the City of Nixa which are being acquired by MJMEUC ("Project") by the Disclosing Party to the Receiving Party whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," or "proprietary" including, without limitation, designs, plans, devices, drawings, mechanisms, specifications, formulations, processes, procedures, methodologies, supplier and customer information, financial data and anything subject to closure under sections 610.010 through 610.035 of the Revised Statutes of Missouri, as amended.

2. Non-Disclosure Covenant. Receiving Party, agrees that it shall: (a) not disclose, or permit to be disclosed, any Confidential Information of the Disclosing Party or any information developed therefrom to anyone except those of its affiliates and the officers, employees, representatives or agents of the Receiving Party and its affiliates who are necessary or reasonable to evaluate the same, and that have agreed to be bound by non-disclosure and confidentiality at least as restrictive as the conditions contained herein; (b) treat all of the Disclosing Party's Confidential Information with the same degree of care as the Receiving Party accords to the Receiving Party's own confidential information, but in no case will the Receiving Party use less than reasonable care; (c) not make use of the Confidential Information of the Disclosing Party or any information developed therefrom, except to the extent necessary to fulfill its obligations under this Agreement or any other written agreement between the parties; and (d) only correspond on matters relating to the Project with employees or representatives of the Disclosing Party that have been identified by the Disclosing Party as working on the Project. The Receiving Party shall be responsible for any unauthorized disclosure or use of the Confidential Information by its affiliates, officers, employees, representatives, or agents.

Notwithstanding the foregoing, if the Receiving Party becomes compelled to disclose any Confidential Information of the Disclosing Party pursuant to a court or administrative order, legal process, law, or regulation, such disclosure shall not be deemed a breach of the terms and conditions set forth herein, provided that the Receiving Party promptly notifies the Disclosing Party before such disclosure in order to allow the Disclosing Party opportunity to seek a protective order or other judicial or regulatory relief. In the event of such disclosure, the Receiving Party shall disclose no more than that portion of the

Disclosing Party's Confidential Information which is specifically required to be disclosed by such court or administrative order, legal process, law or regulation.

3. Remedies. The parties agree that money damages for any and all breaches of this Agreement are both incalculable and insufficient and that any such breach would irreparably harm the Disclosing Party. As such, in the event of an actual or prospective breach of this Agreement by the Receiving Party, the Disclosing Party shall be entitled to a permanent and/or a preliminary injunction to prevent or remedy such breach and shall have the right of specific enforcement against the Receiving Party in addition to any other remedies to which the Disclosing Party may be entitled at law or in equity.

4. Return or Destruction of Confidential Information. Upon expiration or termination of this Agreement, or at any time upon the request of the Disclosing Party, the Receiving Party shall immediately return or destroy all Confidential Information and any information developed therefrom or copies thereof. Except for those documents required to be held by the Receiving Party pursuant to the Missouri Secretary of State's document retention requirements or any other provision of law.

5. No Representations or Warranties. The Confidential Information is provided "AS IS" and the Disclosing Party makes no representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information. The Disclosing Party shall not be liable to the Receiving Party relating to or resulting from the Receiving Party's use of any of the Confidential Information or any errors or omissions therefrom.

6. Ownership of Confidential Information. The Receiving Party hereby acknowledges that all Confidential Information disclosed to it and any information developed therefrom is owned solely by the Disclosing Party, shall remain the exclusive property of the Disclosing Party. Nothing in this Agreement, nor any action taken by either party shall be construed to convey to the Receiving Party any right, title or interest in the Disclosing Party's Confidential Information, or any license to use (except as expressly stated herein), sell, exploit, copy or further develop in any way any of the Confidential Information. No license is granted or implied under any patent, copyright or trademark, any application for any of the foregoing, or any trade name, trade secret or other proprietary information, in which the Disclosing Party has any right, title or interest. The Receiving Party shall use or cause the Disclosing Party's Confidential Information to be used only in a manner consistent with the terms and conditions of this Agreement.

7. Term; Termination; and Survival. The term of this Agreement shall commence on the Effective Date. Notwithstanding anything to the contrary herein, the Receiving Party's obligations of non-disclosure and restrictions on use shall survive termination of this Agreement and shall continue in perpetuity.

8. No Other Obligation. The Receiving Party acknowledges that: (a) this Agreement does not require or compel the Disclosing Party to disclose any Confidential Information to the Receiving Party; (b) neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein; and (c) either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Project.

9. Notices. All notices required or permitted under this Agreement shall be in writing and provided to the following addresses via US regular mail or electronic mail:

To the Disclosing Party at: 715 W. Mt. Vernon St., Nixa, Missouri 65714

To the Receiving Party at: Healy Law Offices, 3010 E. Battlefield, Suite A, Springfield, MO 65804

10. Waiver; Severability. No waiver by either party of any breach, default, or violation of any term, warranty, representation, covenant, condition, or provision of this Agreement shall constitute a waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, covenant, condition, or provision. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

11. Assignment. The Receiving Party may not assign any of its rights hereunder without the prior written consent of the Disclosing Party. Any purported assignment in violation of this Section shall be void. No assignment shall relieve the assigning party of any of its obligations. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express, or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

12. Entire Agreement and Amendment. This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed hereunder and supersedes all prior or contemporaneous agreements concerning such Confidential Information, written or oral. This Agreement may not be modified or amended unless in writing, signed by a duly authorized representative of both parties.

13. City's representative. Unless specifically provided to the contrary herein, approvals of City may be given by the City Administrator, or their authorized designee, without the need of any further action of the City Council of City. The City Administrator, or their authorized designee, is the City's authorized representative for purposes of carrying out the terms of this Agreement. Amendments or modifications to the terms of this Agreement shall be approved by the City Council of City.


14. Governing Law and Dispute Resolution. This Agreement shall be governed by and construed according to the laws of the State of Missouri. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal or state courts located in or having jurisdiction in the County of Christian, State of Missouri, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

WHEREFORE, the parties have duly executed this Agreement on the dates provided below.

CITY OF NIXA, MISSOURI

TFB ENGINEERING, LLC

By: _____
Jimmy Liles, City Administrator

By: _____
Brent McKinney, Principal

Date: _____

Date: 1/25/2022

Approved as to form: