

**MEMPHIS LIGHT, GAS AND WATER DIVISION  
CITY OF MEMPHIS  
MEMPHIS, TENNESSEE**

**CONFIDENTIALTY AND NON-DISCLOSURE AGREEMENT  
for Contract No. 12321 POWER SUPPLY – RENEWABLE & OTHER OPTIONS**

**THIS CONFIDENTIALTY AND NON-DISCLOSURE AGREEMENT** is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2021 with the {\_\_\_\_\_} ("Recipient").

WHEREAS Memphis Light, Gas and Water Division (“Discloser”) possesses certain utility infrastructure information which is confidential (“Confidential Information”);

WHEREAS the Confidential Information is of a nature which may allow a person to identify areas of structural or operational vulnerability of Discloser or that would permit unlawful disruption to, or interference with, the services provided by Discloser; and

WHEREAS the Recipient is willing to receive disclosure of the Confidential Information pursuant to the terms of this Agreement for the purpose of responding to Request for Proposal for Contract No. 12321 POWER SUPPLY – RENEWABLE & OTHER OPTIONS;

NOW THEREFORE, in consideration for the undertakings under this Agreement, the Recipient agrees to the below terms as follows:

1. Disclosure. The Recipient agrees to receive the Confidential Information.
2. Confidentiality.
  - 2.1 *No Use*. The Recipient agrees not to use or duplicate the Confidential Information in any way except for the following purpose authorized by the Discloser: submitting a proposal for Contract No. 12321 POWER SUPPLY – RENEWABLE & OTHER OPTIONS.
  - 2.2 *No Disclosure*. The Recipient agrees to prevent and protect the Confidential Information, or any part of the Confidential Information, from disclosure to any person other than the Recipient's employees that have a need for disclosure in connection with the Recipient's authorized use of the Confidential Information. Disclosure to an independent contractor or consultant of the Recipient is strictly prohibited without the expressed written consent of Discloser.
  - 2.3 *Protection of Secrecy*. The Recipient agrees to take all steps necessary to protect the secrecy of the Confidential Information and to prevent the Confidential Information from falling into the public domain or into the possession of unauthorized persons.

3. Limits on Confidential Information. Confidential Information shall not be deemed proprietary and the Recipient shall have no obligation with respect to such information where the information:
  - (a) Was known to the Recipient prior to receiving any of the Confidential Information from the Discloser;
  - (b) Has become publicly known through no wrongful act of the Recipient;
  - (c) Was received by the Recipient without breach of this Agreement from a third party without restriction as to the use and disclosure of the information;
  - (d) Was independently developed by the Recipient without use of the Confidential Information; or
  - (e) Was ordered to be publicly released by the requirement of a government agency, court, or operation of law.
4. Ownership of Confidential Information. The Recipient agrees that all Confidential Information shall remain the property of Discloser and that the Discloser may use such Confidential Information for any purpose without obligation to Recipient. Nothing contained herein shall be construed as granting or implying to the Recipient any transfer of rights, any patents, or any other intellectual property pertaining to the Confidential Information.
5. Return of Confidential Information. Immediately upon demand by the Discloser, the Recipient shall deliver to the Discloser all of the Discloser's Confidential Information and copies which are then in the possession of the Recipient. At the request of the Discloser, the Recipient shall certify in writing that the Recipient has destroyed or turned over to the Discloser all documents containing such Confidential Information.
6. Term and Termination. The obligations of this Agreement shall be continuing until the Confidential Information disclosed to the Recipient is no longer confidential.
7. Survival of Rights and Obligations. This Agreement inures to the benefit of, and shall be enforceable by the Discloser, the Discloser's successors and assignees; and shall be binding upon the Recipient, the Recipient's successors and assignees.
8. Governing Law. This Agreement shall be interpreted, construed, and governed according to the laws of the State of Tennessee, regardless of choice of law. For the purposes of any dispute arising out of the subject matter of this Agreement, the parties agree that they shall submit solely to the jurisdiction of the courts of Shelby County, Tennessee.
9. Required Disclosure. If the Recipient becomes legally compelled to disclose any Confidential Information, it shall immediately notify the Discloser to the extent legally permissible, so that the Discloser may, at the Discloser's option, seek a protective order or other appropriate remedy or waive compliance with the provisions of this

Agreement. In the event Recipient becomes legally compelled to disclose any Confidential Information, Recipient, after compliance with the requirements of this paragraph, may disclose only such portion of the Confidential Information as is necessary to comply with the legal requirement compelling such disclosure.

10. Waiver. No failure or delay by a party in exercising any right, power, or privilege under this Agreement shall operate as a waiver of said right, power, or privilege, nor shall any single or partial exercise of said right, power, or privilege preclude any other or further exercise of said right, power, or privilege or the exercise of any other of said right, power, or privilege in this Agreement.

11. Authentication.

**IN WITNESS WHEREOF**, the Recipient has caused this Agreement to be executed.

{Recipient}

Signature: \_\_\_\_\_

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

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

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

**Approved**  
**MEMPHIS LIGHT, GAS AND WATER DIVISION**

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

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

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

NOTICE: This Agreement MUST be signed by an individual empowered to contractually bind the Recipient. If said individual is not the chief executive, this Agreement shall have attached to said Agreement evidence showing the individual's authority to contractually bind the Recipient.

END