

**ATTACHMENT 4  
SAMPLE MUTUAL NONDISCLOSURE AGREEMENT  
FOR  
ORACLE THIRD PARTY SUPPORT  
RFP 2003**

AGREEMENT NO. \_\_\_\_\_

**MUTUAL NONDISCLOSURE AGREEMENT**

THIS MUTUAL NONDISCLOSURE AGREEMENT is made and entered into by and between the Southwest Florida Water Management District, a public corporation of the State of Florida, whose address is 2379 Broad Street, Brooksville, Florida 34604-6899, hereinafter referred to as the "District," and **Vendor** whose address is **Vendor Address, City, State Zip Code**, hereinafter referred to as the "Consultant."

1. Nature and Purpose. The District desires to engage the Consultant to provide support for District's Oracle database environment per District RFP 2003 (the "Project"). This Agreement is made in order for either party to disclose ("Disclosing Party") to the other ("Receiving Party") during the term of this Agreement, such technical, business and personal information as the Disclosing Party may elect to disclose, so that the Receiving Party may review and use the same solely for the purpose of completing the Project, under terms that will protect the confidential and proprietary nature of such information.

2. Confidential Information.

2.1 As used in this Agreement, "Confidential Information" shall mean information which is a "trade secret" and made confidential and exempt from disclosure by Section 815.045, Florida Statutes (F.S.). "Trade secret" is defined in Section 812.081(1)(c), F.S., as follows:

"Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be: 1. Secret; 2. of value; 3. for use or in use by the business; and 4. of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it, when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

2.2 Information which is disclosed orally shall not be considered Confidential Information unless (i) it is identified as Confidential Information prior to or at the time of such disclosure, and (ii) it is memorialized in writing within fifteen (15) days following such disclosure by the Disclosing Party. Such confirmation shall describe in detail the information which qualifies as Confidential Information under this Agreement. Information which is disclosed visually or in tangible form (whether by document, electronic media or other form) shall not be considered Confidential Information unless it is clearly identified and marked as Confidential Information at the time of receipt. Information whether disclosed orally, visually or in tangible form (whether by document, electronic media or other form), shall not be considered Confidential Information if such information is non-confidential pursuant to Paragraph 3 below.

2.3 In addition to the above, "Confidential Information" shall also include information made confidential and exempt from disclosure under Chapter 119, Florida Statutes (F.S.), Florida's Public Records Act, as may be amended from time to time. Such exempt information includes, but is not limited to, social security numbers, bank account numbers, and debit, charge and credit card numbers. Exempt information under Section 119.071(5), F.S., shall be considered "Confidential Information" regardless of whether such information is marked "Confidential Information."

3. Non-Confidential Information. The obligations of this Agreement hereof shall not apply to any information if:

- a. It was in the public domain at the time of communication to the Receiving Party or is later placed in the public domain by the Disclosing Party;
- b. It entered the public domain through no fault of the Receiving Party subsequent to the time of disclosure hereunder to the Receiving Party;
- c. It was in the Receiving Party's possession free of any obligation of confidence prior to disclosure hereunder;
- d. It was developed by employees or agents of the Receiving Party independently of and without reference to any Confidential Information; or
- e. Such information is a public record subject to disclosure under Section 119, F.S.

4. Restrictions.

4.1 Disclosure to Third Parties. The Receiving Party shall not disclose, publish or communicate the Confidential Information to any third party without the prior written consent of the Disclosing Party. However, the Receiving Party may disclose the Confidential Information to a third party who has a need to know the Confidential Information to accomplish the purpose as stated in Section 1, and (i) is an accountant, attorney, underwriter or adviser under a duty of confidentiality; or (ii) is under a written obligation of confidentiality at least as restrictive as this Agreement.

- 4.2 Disclosure within Receiving Party's Organization. The Receiving Party shall not use the Confidential Information nor circulate it within its own organization except to the extent necessary or desirable for negotiations, discussions and consultations with personnel or authorized representatives of the parties, relating to the purposes set forth in Section 1. The Receiving Party agrees to have any and all individuals who may have access to Confidential Information acknowledge the obligations contained in this Agreement regarding the protection and use of the Disclosing Party's Confidential Information prior to such individuals having access to Confidential Information.
- 4.3 Duty of Care. The Receiving Party shall maintain the Disclosing Party's Confidential Information using the same degree of care as it uses to protect its own confidential information but in any case using no less than a reasonable degree of care. The Receiving Party shall immediately notify the Disclosing Party if the Confidential Information is used, distributed, or communicated in a manner not authorized under this Agreement.
- 4.4 Return or Destruction of Confidential Information. Upon demand or if not otherwise demanded, upon the termination of such project or purposes, the Confidential Information and all copies thereof and notes made therefrom shall be immediately destroyed by the Receiving Party or returned to the Disclosing Party. If destroyed, the Receiving Party shall certify in writing to the Disclosing Party, upon Disclosing Party's request, that all such information, including all copies, has been destroyed.
- 4.5 Data Protection and Privacy Laws. Consultant shall comply and warrants that it has complied with implementing all applicable data protection and privacy laws and regulations in any relevant jurisdiction. Consultant shall provide notice to the District of any breach of security concerning confidential personal information where such information was previously disclosed to Consultant by District pursuant to this Agreement, in accordance with Section 501.171, F.S.
- 4.6 Access of Social Security Numbers. The parties agree that social security numbers shall only be disclosed in accordance with Section 119.071(5)(a)7., F.S.
- 4.7 Legal Action Requiring Disclosure. If Receiving Party is required by law, rule or regulation, or requested in any judicial or administrative proceeding or by any governmental or regulatory authority, to disclose the Confidential Information, Receiving Party shall give Disclosing Party prompt notice of such request so that Disclosing Party may seek an appropriate protective order or similar protective measure. If Receiving Party is nonetheless compelled to disclose the Confidential Information, Receiving Party shall disclose only that portion of the Confidential Information that Receiving Party is legally required to disclose.
5. No License. No license to the Receiving Party under any trademark, patent or copyright, or application for same which are now or thereafter may be obtained by the Disclosing Party, is either granted or implied by the conveying of Confidential Information to the Receiving Party.
6. Contact Person. The parties agree to appoint the following contact persons to control dissemination of the Confidential Information:

For District:  
Kim Cash

For Consultant:

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Any changes to the above contact persons must be provided to the other party in writing.

7. Term. This Agreement shall be effective upon execution by both parties and shall govern all communications of the Confidential Information by Disclosing Party from the effective date of this Agreement through the date on which the Project is complete or is no longer being pursued by the parties.
8. Survival. Notwithstanding the termination of this Agreement, the obligations of each party regarding the protection and use of the other party's Confidential Information shall survive the termination of this Agreement in perpetuity.
9. Florida Law. Notwithstanding any other term or condition of this Agreement, the District does not agree to any term or condition that conflicts with Florida law as may be amended from time to time.
10. Miscellaneous.
  - 10.1 In the event of any litigation or other proceedings before an adjudicative authority regarding the construction hereof or any breach hereof, the non-prevailing party shall pay the reasonable attorneys' fees and expenses of the prevailing party incurred therein.
  - 10.2 Each party acknowledges that unauthorized disclosure or use of the Confidential Information by the Receiving Party may cause irreparable harm and damage to the business of Disclosing Party which may be difficult to ascertain and which may not be adequately compensated by damages at law. Therefore, each party agrees that, in the event of a breach or threatened breach of the terms of this Agreement, the Disclosing Party shall be entitled to seek an injunction prohibiting any unauthorized disclosure or use of its Confidential Information. Any such injunction relief request may be in addition to, and not in lieu of, any appropriate monetary damages.
  - 10.3 In the event of any legal proceedings arising from or related to this Agreement venue for such proceedings, if in state court, will be exclusively in Hernando County, Florida, and if in federal court, will be in the Middle District of Florida, Tampa Division.
  - 10.4 This Agreement shall be construed in accordance with the laws of Florida in the United States, without regard to principles of conflicts of law.
  - 10.5 This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior negotiations, agreements and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by all parties.

10.6 In the event of the invalidity or unenforceability of any provision of this Agreement under applicable law, the parties agree that such invalidity or unenforceability shall not affect the validity or enforceability of the remaining portions of this Agreement.

IN WITNESS WHEREOF, the parties hereto, or their lawful representatives, have executed this Agreement on the day and year set forth next to their signatures below.

SOUTHWEST FLORIDA  
WATER MANAGEMENT DISTRICT

VENDOR

By: \_\_\_\_\_  
Amanda Rice, P.E.                      Date  
Assistant Executive Director

By: \_\_\_\_\_  
Name                                      Date  
Title  
Authorized Agent for Company