




ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

March 10, 2023

To: Terrence D. McCracken, Secretary to the Authority

From: Michael J. Quinn, Senior Distribution Engineer 

Subject: GIS e-Data Confidentiality and Non-Disclosure Licensing Agreement
Town of Orchard Park
PN 202300016

Town of Orchard Park has requested use of the Authority's GIS data pertinent to Authority's facilities within the Town's limits.

The Authority's Law Department with input from the Engineering Department and Authority GIS staff developed the terms of this Agreement and collectively are recommending that the Board review and approve attached Agreement and authorize the Chairman to execute same.

Attached find one copy of the Agreement which has been approved by the Town of Orchard Park and is currently awaiting execution by the Town. Two copies of the partially executed agreements will be forwarded to the Chairman for signature upon receipt. Thank you and please feel free to contact me if you have any questions.

MJQ:jmf
Attachments
cc: L.Kowalski
M.McAuley
GISL-333-2301-X-OPTN

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract: _____ **Project No.:** 202300016
Project Description: GIS e-Data Confidentiality and Non-Disclosure Licensing Agreement
Town of Orchard Park

Item Description:


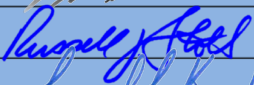


- | | | | |
|---|--|---|---------------------------------------|
| <input checked="" type="checkbox"/> Agreement | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> BCD | <input type="checkbox"/> NYSDOT Agreement | <input type="checkbox"/> Contract Documents | <input type="checkbox"/> Addendum |
| <input type="checkbox"/> Recommendation for Award of Contract | <input type="checkbox"/> Recommendation to Reject Bids | | |
| <input type="checkbox"/> Request for Proposals | | | |
| <input type="checkbox"/> Other _____ | | | |

Action Requested:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Board Authorization to Execute | <input checked="" type="checkbox"/> Legal Approval |
| <input type="checkbox"/> Board Authorization to Award | <input checked="" type="checkbox"/> Execution by the Chairman |
| <input type="checkbox"/> Board Authorization to Advertise for Bids | <input type="checkbox"/> Execution by the Secretary to the Authority |
| <input type="checkbox"/> Board Authorization to Solicit Request for Proposals | |
| <input type="checkbox"/> Other _____ | |

Approvals Needed:

APPROVED AS TO CONTENT:

- | | | |
|--|---|------------------|
| <input checked="" type="checkbox"/> Sr Distribution Engineer |  | Date: 3/9/2023 |
| <input checked="" type="checkbox"/> Chief Operating Officer |  | Date: 3/10/2023 |
| <input checked="" type="checkbox"/> Executive Engineer |  | Date: 03/13/2023 |
| <input type="checkbox"/> Director of Administration | _____ | Date: _____ |
| <input type="checkbox"/> Risk Manager | _____ | Date: _____ |
| <input type="checkbox"/> Chief Financial Officer | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Legal |  | Date: 3/10/2023 |

APPROVED FOR BOARD RESOLUTION:

- | | | |
|--|--|-----------------|
| <input checked="" type="checkbox"/> Secretary to the Authority |  | Date: 3/13/2023 |
|--|--|-----------------|

Remarks: _____

Resolution Date: _____ **Item No:** _____

ERIE COUNTY WATER AUTHORITY GIS e-DATA

CONFIDENTIALITY AND NON-DISCLOSURE LICENSING AGREEMENT

THIS CONFIDENTIALITY & NON-DISCLOSURE LICENSING AGREEMENT (hereinafter “Agreement”) made on this ____ day of _____, 20__, between

ERIE COUNTY WATER AUTHORITY

295 Main Street, Room 350
Buffalo, New York 14203

hereinafter referred to as the “Authority”

and

TOWN OF ORCHARD PARK

4295 South Buffalo Street
Orchard Park, New York 14127

hereinafter referred to as the “Municipality”

The Authority and the Municipality may also be referred to as the “Parties” collectively or as a “Party” individually.

Purpose

This Agreement is being entered for the purpose of protecting data and information tracking, plotting, or identifying properties and facilities of the critical water infrastructure owned, managed, or leased by the Authority. For purposes of this Agreement, “critical infrastructure” means systems, assets, places, or things, whether physical or virtual, so vital to the public that the disruption, incapacitation or destruction of such systems, assets, places, or things could jeopardize the health, safety, welfare, or security of the public or the economy.

PART 1. DEFINITIONS

A. Confidential Information

Confidential Information shall be defined to include any information, regardless of form or medium of disclosure (e.g., verbal, hard copy, or electronic) or the source of information relating to the critical water infrastructure owned, managed, or leased by the Authority including but not limited to digital GIS eData used for the tracking, plotting, or identifying of properties and facilities within a critical water infrastructure.

Confidential information does not include the following:

- (a) information that is previously rightfully known to the Municipality without restriction on disclosure,
- (b) information that, from no act or omission on the part of the Municipality, is or becomes generally known in the relevant industry or in the public domain, or
- (c) information that is independently developed by the Municipality without the use of Confidential Information provided by the Authority.

Title to all Confidential Information disclosed in accordance with this Agreement remains the property of the Authority. Confidential Information is provided on an “as is” basis, and the Authority makes no warranties, guarantees or representations of any kind express or implied, or arising by custom or trade usage, as to any matter whatsoever, without limitation, and specifically makes no implied warranty of fitness for any particular purpose or use, including but not limited to adequacy, accuracy, completeness or conformity to any representation, description, or other information relating to the property or facilities of a critical water infrastructure.

B. Authorized Use

“Authorized Use” shall be defined as the use of Confidential Information by the Municipality, its employees, or agents, solely for the purpose of identifying and locating water facilities within the boundaries of the Municipality. Disclosure, display, use, duplication, storage, or transmittal of Confidential Information, in any form, for any purpose other than as agreed to, including extrapolation or retention of summary information, data or business processes, even if without specific identifiers, shall be deemed an “unauthorized use.”

C. Authorized Person

“Authorized Person” shall be defined as those persons within the Municipality’s employ or control and identified by the Municipality as having a need to receive, possess, store, access, or view Confidential Information for an Authorized Use.

PART 2. CONFIDENTIALITY & NON-DISCLOSURE REQUIREMENTS

Upon proper execution of this Agreement, the Authority will be granted a non-exclusive, non-transferable license to display, use, duplicate, store, and disclose Confidential Information only for an Authorized Use. The Municipality shall safeguard all Confidential Information which is delivered from the Authority to ensure its authorized use and to protect and prevent its unauthorized use or disclosure.

“Safeguard all Confidential Information” shall be defined as the Municipality taking either one, or a combination of the following security measures, whichever standard is higher:

- (a) Where a Party has established security procedures for its own confidential, sensitive business information which impose security requirements for the protection of its own trade secret, proprietary or confidential information, the Municipality shall protect the Confidential Information using the same means; and/or
- (b) Where a Party has not established such internal procedures, the Municipality shall take the commercial measures defined below, to protect the Confidential Information.

Commercial Measures to Protect Confidential Information

For purposes of this Agreement, “commercial measures” shall be defined and will include each of the following responsibilities to be undertaken by the Municipality:

1. Use Restriction

Confidential Information shall only be received, possessed, stored, accessed and/or viewed by Authorized Persons.

2. Access by Authorized Person(s)

- a. The Municipality shall be responsible for identifying those persons within its employ or control (e.g., employees and agents) who have a need to receive, possess, store, access, or view Confidential Information for an authorized use (hereinafter “Authorized Person(s)”).
- b. The Municipality shall be required to take commercially reasonable steps to inform each Authorized Person of their individual obligation to protect the security of Confidential Information in accordance with the requirements of this Agreement.
- c. The Municipality shall not permit Confidential Information to be received, possessed, stored, accessed, or viewed by any Authorized Person until such person has agreed and acknowledged in writing to comply with the required security obligations set forth below.

3. Access by Third-Party Consultant or Subcontractor

- a. The Municipality shall not permit Confidential Information to be received, possessed, stored, accessed, or viewed by any third-party consultant or subcontractor without the express written consent of the Authority.
- b. The Authority, through its General Counsel, may only give such written consent after the legal representative of the third-party consultant or subcontractor has been

made aware of and has agreed in writing to comply with the required security obligations of this Agreement.

- c. If such written consent is given by the Authority's General Counsel, the third-party consultant or subcontractor shall not be allowed to further disseminate or distribute Confidential Information, other than to provide access by Authorized Person(s) within third-party consultant's or subcontractor's control and oversight.

4. Security Obligations Regarding Confidential Information

Any person(s) who receive, possess, store, access, or view Confidential Information from a Party, or an approved third-party consultant or subcontractor (hereinafter "Custodian") shall be subject to the following security obligations:

- a. Custodian is the SOLE entity authorized to duplicate, distribute, or otherwise transmit Confidential Information,
- b. Custodian's legal representative must approve any process used to duplicate, distribute, or otherwise transmit Confidential Information to Authorized Person(s), and may NOT approve or use any process which involves the use of any public internet or other non-secure medium,
- c. Unless otherwise authorized by Custodian's legal representative, Confidential Information may NOT be stored on personal (non-business) computing or other electronic devices (including zip drives, thumb drives, disks, or any similar computing storage or copying device) or taken or removed in any form outside of the physical premises of the Custodian.
- d. Confidential Information may only be duplicated, distributed, or otherwise transmitted "as is", without alteration of any kind. "Confidential" or "Copyright" notices, whether originally in physical or electronic medium, shall not be removed from and shall be duplicated on Confidential Information when such information is duplicated, distributed, or otherwise transmitted pursuant to (b) above.
- e. Other than as set forth in (a-d), above, Confidential Information may not be duplicated, distributed, stored, or otherwise transmitted or communicated to or by any person or system. Authorized Person(s) may not copy, re-duplicate, re-transmit or re-distribute Confidential Information, in any form, whether whole or in part, or in any medium, whether electronic or hard copy, except under circumstances specifically permitted under the terms of this Agreement.
- f. Upon termination of employment, or upon completion or expiration of the services performed by or on behalf of the Municipality or any approved third-party consultant or subcontractor, each Authorized Person(s) shall be required to return Confidential Information to the Custodian's legal representative, and/or to certify that all electronic, optical, or other copies have been destroyed within any

electronic storage or other medium, and all device(s) used or provided to and in the possession of such Authorized Person for the possession or storage of Confidential Information shall be surrendered and returned to the Custodian.

5. Chain of Custody

The Municipality shall be required to keep a record of all copies of the Confidential Information that have been made and distributed to those persons within its employ, and to any approved third-party consultant or subcontractor who has a need to access Confidential Information for such authorized use.

Any third-party consultant or subcontractor receiving Confidential Information from the Municipality shall, as a condition of accessing such information, certify that such entity shall keep a record of all copies of the Confidential Information that have been made and distributed to those persons within the employ of such entity, and that such entity will provide its written certification of compliance with the provisions of this Agreement to the Municipality as provided in paragraph 6, below.

6. Certification by the Municipality of Return of Confidential Information

The Municipality and its third-party consultant or subcontractor who have received Confidential Information shall certify the chain of custody of such information as follows:

a. The Municipality:

Upon termination of the Agreement, the Municipality shall independently certify, in writing, to the Authority, its compliance, during the terms of this Agreement. The Municipality shall specifically certify:

- (i) the documented chain of custody naming all Authorized Person(s), consultants and subcontractors to whom the Confidential Information was duplicated, distributed, or transmitted,
- (ii) as to Authorized Person(s) within the internal employment or control of the Municipality, that all copies of Confidential Information have either been returned or are certified by such person(s) as having been destroyed or permanently deleted from all forms of electronic storage, and the Municipality shall attach the certifications of its consultants and subcontractors.

b. Third-Party Consultant or Subcontractor:

Upon termination of its engagement, such entity shall independently certify, in writing, its compliance with the terms of this Agreement, and shall specifically certify:

- (i) the documented chain of custody naming all Authorized Person(s) to whom the Confidential Information was duplicated, distributed, or transmitted, and
- (ii) as to such Authorized Person(s) within the internal employment or control of such entity, that all copies of Confidential Information have either been returned or are certified by such person(s) as having been destroyed or permanently deleted from all forms of electronic storage.

PART 3. LIMITATION OF LIABILITY

The Authority makes no claims as to the accuracy of the GIS data and assumes no responsibility for their positional or content accuracy. The Authority makes no claims as to the ability of the GIS data to fulfill the Municipality's application requirements.

In providing data, the Authority assumes no obligation to assist the Municipality in the use of the data or in the development, use, or maintenance of any applications applied to the data.

The Municipality recognizes and agrees that the Authority makes NO REPRESENTATIONS OF ANY KIND INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, NOR ARE ANY SUCH WARRANTIES TO BE IMPLIED WITH RESPECT TO THE DATA OR INFORMATION FURNISHED.

PART 4. COMPLIANCE

Should the Municipality breach or threaten to breach this Agreement, the Authority shall have all equitable and legal rights (including the right to obtain injunctive relief) to prevent such breach and/or to be fully compensated (including reasonable attorney's fees) for losses or damages resulting from such breach. The Municipality is deemed to acknowledge that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the Confidential Information.

The Municipality affirms that its employees with access to Confidential Information will not disclose such Confidential Information to anyone, except as provided in this Agreement. In addition, Authorized Persons shall safeguard all Confidential Information from unauthorized access, loss, theft, destruction, and the like. The Municipality shall notify the Authority immediately upon becoming aware that Confidential Information is in the possession of or has been disclosed to an unauthorized person or entity.

PART 5. GOVERNING LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the other provisions shall remain in full force and effect.

PART 6. TERMINATION

This Agreement may be terminated by either Party upon thirty (30) days written notice to the other party. Upon such termination, the Municipality must cease use of all licensed data and return same to the Authority. The Municipality's contractual and legal obligations relating to the use of Confidential Information shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties do hereby enter and execute this Agreement effective ____ day of _____, 20__, the date of the Authority's adopting resolution authorizing its execution.

ERIE COUNTY WATER AUTHORITY

By: _____
Jerome D. Schad, Chairman

TOWN OF ORCHARD PARK

By: _____

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the ____ day of _____, in the year 20__, before me personally came Jerome D. Schad to me known, who, being by me duly sworn, did depose and say that he resides in Amherst, New York, that he is the Chairman of the Erie County Water Authority described in the above instrument; and that he signed his name thereto by order of the Board of Commissioners of said Authority.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the ____ day of _____, in the year 20__, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides in _____, that he/she is the _____ of the Town of Orchard Park; and that he/she was authorized by Town of Orchard Park; to sign this instrument.

Notary Public