

**MTA Construction & Development Company**

**Non-Disclosure and Confidentiality Agreement**

Each of the undersigned (each, a "Recipient") has executed this Non-Disclosure and Confidentiality Agreement (the "Agreement") as of the date set forth below their signature (with respect to such Recipient, the "Effective Date") in connection with its participation as either a Proposer, or as a Major Participant associated with such Proposer under the terms of the RFP.

**RECITALS**

WHEREAS, on [ ], 2021 MTA C&D issued to certain shortlisted Proposers the Instructions to Proposers for the procurement of Contract C52072 (as amended by any addenda, the "ITP");

WHEREAS, the ITP constitutes Volume 1 of the RFP, and such RFP also includes certain other Reference Documents provided to Proposers by MTA C&D to facilitate Proposer's diligence of the proposed scopes of work;

WHEREAS, during the course of the procurement, as part of the Reference Documents MTA C&D will provide certain "Security Sensitive Information" or "SSI" (each as defined below) to each Proposer for use in preparing its Proposal;

WHEREAS, MTA C&D has determined that it is necessary and appropriate that the SSI be made available subject to enhanced protections and assurances regarding confidentiality and disclosure; and

WHEREAS, MTA C&D desires to provide such SSI to Recipient on such basis, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of mutual covenants, terms and conditions set forth herein, the undersigned Recipients agree as follows:

1. Except as set forth in Section 2 below, "Security Sensitive Information" or "SSI" means:
  - a. any CAD files provided by MTA C&D to the Recipient as Reference Documents; and
  - b. any other non-public, confidential or proprietary Reference Documents which are identified by MTA C&D as such in writing and which are disclosed before, on or after the Effective Date, by MTA C&D to the Recipient, or to any of such Recipient's employees, officers, directors, partners, shareholders, agents, attorneys, accountants or advisors (collectively, "Representatives").
2. Except as required by applicable federal, state or local law or regulation, the term "SSI" as used in this Agreement shall not include information that at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Agreement, act or omission by the Recipient or any of its Representatives.
3. In addition to complying with its obligations under Section 6.2 of the ITP, the Recipient will (and will ensure that each of its Representatives and its subcontractors, consultants, and vendors):
  - a. use SSI only in the development of the below-named Proposer's Proposal, as set forth in the RFP, and for no other purpose;
  - b. not disclose or publish any SSI in an unauthorized manner;
  - c. hold SSI in strict confidence using at least the degree of care it uses to protect its own most sensitive information and no less than a reasonable degree of care, including, but not

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- limited to, requiring password protection for SSI files and storing SSI-related material in a secure location;
- d. not discuss with or otherwise make available SSI to any unauthorized person;
  - e. not physically retain, photograph, video-record, publish (including through social-media) or otherwise make any record of any SSI; and
  - f. institute Information Barriers designed to preserve the confidentiality of the SSI and prevent their unauthorized disclosure, including to Representatives who do not require access to SSI in the course of their participation in the RFP.
4. Further, in addition to complying with its obligations under Section 6.2 of the ITP, the Recipient will:
    - a. obtain a signed Agreement of this Agreement from each subcontractor, consultant, and vendor of the Recipient which is not otherwise a Major Participant and which requires access to the SSI as a subrecipient, such acknowledgment to be in the form attached hereto as Appendix A; and
    - b. submit copies of such signatures promptly upon written request to MTA C&D, Procurement Officer, Umberto Gelsomini, at [umberto.gelsomini@nyct.com](mailto:umberto.gelsomini@nyct.com).
  5. If the Recipient is served with a subpoena or discovery request or receives a Freedom of Information Law request relating to SSI, Recipient will immediately notify MTA C&D and cooperate with MTA C&D to seek a protective order or take other necessary action to protect its SSI.
  6. If at any time, any person or firm who/which has received SSI from Recipient in accordance with the terms hereof, has been discharged or terminated by Recipient, or is no longer participating with Recipient in the procurement or, if Recipient has been awarded the Contract, and such person or firm is no longer participating with Recipient in the performance of the Contract, Recipient shall terminate all access of such person or firm to SSI and shall cause such person or firm to surrender and relinquish all SSI he/she/it has received from Recipient.
  7. MTA C&D does not grant Recipient any right, title or interest of any kind in any intellectual property contained in or relating to SSI.
  8. Upon the issuance of a Notice of Award or as otherwise requested by MTA C&D, the Recipient shall promptly deliver all SSI (including any notes, photographs, renderings whether manual or electronic, sketches, scans, or diagrams) in its possession (in whatever form) or the possession of its subcontractors, consultants, Vendors, and Representatives to MTA C&D at the Recipient's expense, or otherwise destroy and/or delete such SSI with MTA C&D's consent, and thereafter certify in writing to MTA C&D its compliance with the foregoing.
  9. MTA C&D reserves the right to periodically audit the Recipient's security practices during the procurement process to ensure Recipient is undertaking adequate measures to protect SSI in accordance with this Agreement and the ITP. MTA C&D may create an inventory of all SSI disclosed to Recipient and, upon request by MTA C&D, Recipient shall check all SSI provided to it against such inventory and ensure that it has taken steps to protect and safeguard SSI in accordance with the terms hereof.
  10. The Recipient acknowledges and agrees that its obligations under this Agreement shall be perpetual or until such time as the SSI is publicly available.

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11. The Recipient will promptly give MTA C&D written notice of any breach of this Agreement and promptly take all necessary steps to mitigate the same.
12. The Recipient acknowledges and agrees that its obligations hereunder are extraordinary, unique and vital to the security and well-being of the MTA C&D and its customers. Further, the Recipient agrees that any breach of this Agreement will cause injury to MTA C&D for which money damages would be an inadequate remedy and that, in addition to remedies at law, MTA C&D is entitled to equitable relief as a remedy for any such breach. MTA C&D shall be entitled, in addition to all other rights and remedies, to seek injunctions restraining any breach by Recipient, without being required to show any actual damage or to post any bond or other security.
13. To the fullest extent permitted by law, the Recipient will release, defend, indemnify and hold harmless MTA C&D, and each of their affiliates and respective shareholders, officers, directors, employees, agents, successors and permitted assigns from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees, resulting from a breach of this Agreement by the Recipient.
14. Capitalized terms not otherwise defined herein have their meaning set forth in the ITP.
15. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.
16. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its conflicts of laws principles.

*[remainder of page intentionally left blank]*

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Under penalty of perjury, I hereby swear and affirm that I am authorized to act on behalf of the Proposer in signing and delivering this Agreement, and acknowledge that MTA C&D is relying on my representation to this effect.

Proposer: \_\_\_\_\_

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

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

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

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

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*Instructions: Each Major Participant that is not itself the Proposer to sign. For any Major Participant that is a Joint Venture, include signature by each joint venture partner or member. Replicate page as needed for additional signatures.*

\* \* \*

Under penalty of perjury, each of the undersigned Major Participants: (a) certifies on behalf of the entity for which they sign that the person named on the prior signature page above is authorized by the relevant entity to sign this Agreement on behalf of the Proposer; and (b) swears and affirms that they are authorized to act on behalf of the entity for which they sign and acknowledge that MTA C&D is relying on their representation to this effect.

On behalf of: \_\_\_\_\_

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

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

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

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

On behalf of: \_\_\_\_\_

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

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

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

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

On behalf of: \_\_\_\_\_

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

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

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

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

On behalf of: \_\_\_\_\_

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

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

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

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

**Appendix A  
Form of Sub-Recipient Acknowledgment**

The undersigned acknowledges receipt of a copy of, and acknowledges and understands all terms of, the Non-Disclosure and Confidentiality Acknowledgment (the “Agreement”) in relation to the Instructions to Proposers (the “ITP”) for the procurement of Contract [ ] issued on [ ], 2021 by MTA C&D executed by a Proposer or Major Participant (as applicable, the “Primary Recipient”), to which the undersigned is a subcontractor, consultant, and/or vendor in connection with the procurement being undertaken pursuant to the ITP..

The undersigned furthermore agrees to comply with the terms of such Agreement as a “Recipient” (as such term is defined in the Agreement), notwithstanding the undersigned being a subsidiary recipient of SSI by virtue of its receipt of such SSI from or on behalf of the Primary Recipient.

Under penalty of perjury, I hereby swear and affirm that I am authorized to act on behalf of the Recipient named below in signing and delivering this Sub-Recipient Agreement, and acknowledge that MTA C&D is relying on my representation to this effect.

Recipient: \_\_\_\_\_

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

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

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

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