

## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement”), effective \_\_\_\_\_ (“Effective Date”), is entered into by and between \_\_\_\_\_ (“Recipient”), doing business at the following address: \_\_\_\_\_

\_\_\_\_\_, and the City of Mount Vernon, Ohio (“Discloser”), having offices at 40 Public Square, Mount Vernon, Ohio 43050, entered into the day, month and year set out below, (each herein referred to individually as a “Party,” or collectively as the “Parties”).

Whereas, Discloser has issued a Request for Qualifications (“RFQ”) for a design of a new courthouse; and

Whereas, in order for Recipient to evaluate and provide a response to the RFQ, the Recipient will need access to confidential State information pertinent to providing a response to the RFQ; and

Whereas, the parties recognize that this analysis requires Recipient's review of Discloser's confidential information and that this data requires the highest degree of protection;

Now, therefore, the parties agree to the following terms and conditions for such disclosure:

1) In consideration of the covenants and conditions contained herein, the Parties hereby agree to the following:

Non-Disclosure/Confidentiality.

a) Definition

i) “Confidential Information” refers to the following items Discloser discloses to the Recipient:

(1) Any information that is in written, graphic, machine readable, or other tangible form, and that Discloser designates as “Confidential”;

(2) Any oral or visual information Discloser designates as “Confidential” at the time of disclosure;

(3) Any source code and any names of actual or potential Disclosers, whether or not marked as confidential; and

(4) Any other nonpublic, sensitive or third party information that is possession of Discloser and is disclosed to Recipient under this Agreement.

(5) Notwithstanding the foregoing, Confidential Information does not include information that:

- (a) Was already in the Recipient's possession before disclosure by the Discloser, and the information was received by the Recipient without the obligation of confidence;
- (b) Is independently developed by Recipient without use of, or reference to, Confidential Information;
- (c) Is or becomes publicly available without breach of this Agreement except as provided in (2)(a)(i)(6);
- (d) Is rightfully received by the Recipient from a third party without an obligation of confidence; or
- (e) Is disclosed by the Recipient with the written consent of the Discloser.

b) Restrictions on Use.

i) Recipient shall not use the Confidential Information for any purpose except to evaluate and prepare a response to RFQ.

ii) Recipient:

(1) Shall not disclose Confidential Information to any employee or subcontractor of Recipient unless such person needs access in order to facilitate the evaluation and preparation of a response to RFQ and executes a nondisclosure agreement with the Recipient with terms no less restrictive than those of this Section (2)(b);

(2) Shall not disclose Confidential Information to any other third party without Discloser's prior written consent; and

(3) Shall not reproduce Confidential Information in any form except as required to facilitate the evaluation and preparation of a response to RFQ.

iii) Without limiting the foregoing, Recipient shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care.

iv) Recipient shall promptly notify Discloser of any loss, release, misuse or misappropriation of Confidential Information.

v) Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Recipient shall give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at Discloser's expense.

vi) The provisions of this Section (1)(b) shall survive the termination of this Agreement.

c) Injunction. The Recipient will be liable for disclosure of any Confidential Information. The Parties agree that the disclosure of Confidential Information of the Discloser may cause the Discloser irreparable damage for which remedies other than injunctive relief

may be inadequate, and the Recipient agrees that in the event of a breach of the obligations hereunder, the Discloser shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

d) Return of Confidential Information. Upon request of Discloser or termination of this Agreement, Recipient shall return all Confidential Information, copies, extracts, or notes derived from Confidential Information to Discloser or certify, in writing, the destruction thereof. The provisions of this Section (1)(d) shall survive the termination of this Agreement.

e) Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Discloser retains all right, title and interest in and to all Confidential Information and its reproductions.

2) No Obligation. Nothing in this Agreement shall obligate the Discloser to proceed with any other transaction between the Discloser and the Recipient. The exchange of information does not imply imminent purchase, nor should it in any way be construed as a commitment to purchase by the State.

3) Disputes. This Agreement will be governed by the laws of Ohio, and venue for any disputes will lie exclusively with the appropriate court in Knox County, Ohio.

4) Severability. If any provision of this Agreement or the application of any provision is held by a court to be contrary to law, the remaining provisions of the Agreement will remain in full force and effect.

5) Amendments - Waiver. No change to any provision of this Agreement will be effective unless it is in writing and signed by both Parties. The failure of either Party at any time to demand strict performance by the other party of any of the terms of this Agreement will not be a waiver of those terms. Waivers must be in writing to be effective, and either Party may at any later time demand strict performance.

6) Termination. Either party may terminate this Agreement upon provision to the other party one (1) day written notice of election to so terminate, subject to the provisions of section (1)(d) of this Agreement, provided that such unilateral termination by Recipient is without prejudice to the State of Ohio.

7) Location of Data. Recipient affirms that it shall not and shall not allow others to take the Discloser's Confidential Information outside the United States without express written authorization from the Discloser.

8) Authority to Sign. The person whose signature appears below on behalf of the Recipient represents and warrants that he/she has authority to bind the Recipient and all employees and agents of the Recipient to the terms of this contract and has specific authority to sign this Agreement.

9) Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

10) Entire Agreement. This Agreement is the entire agreement between the Parties with respect to its subject matter and supersedes any previous agreements, whether oral or written.

11) Effective Date. This Agreement is made effective as of the date of the last signature of the authorized representatives below.

CITY OF MOUNT VERNON, OHIO

RECIPIENT (Company)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name Authorized Representative

\_\_\_\_\_  
Printed Name of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative