



**EAST BAY COMMUNITY ENERGY
ENERGY RESILIENT MUNICIPAL CRITICAL FACILITIES
REQUEST FOR OFFERS**

ATTACHMENT G: CUSTOMER DATA SHARING NDA TEMPLATE

**NON-DISCLOSURE AGREEMENT
CUSTOMER INFORMATION**

This Non-Disclosure Agreement (“Agreement”) is entered into by and between East Bay Community Energy (“EBCE”) and _____ (“Contractor”) as of _____, 2021 (“Effective Date”). As used herein EBCE and Contractor may each be referred to individually as a “Party” and collectively as “Parties.” The provisions of this Agreement and EBCE’s Customer Confidentiality Policy govern the disclosure of EBCE’s confidential customer information to Contractor (“Disclosure Provisions”).

The Parties hereby mutually agree that:

1. Subject to the terms and conditions of this Agreement, current proprietary and confidential information of EBCE regarding customers of EBCE (“EBCE Customers”) may be disclosed to Contractor from time to time in connection herewith as provided by the Disclosure Provisions and solely for the purposes set forth on Schedule A. Such disclosure is subject to the following legal continuing representations and warranties by Contractor:
 - a. Contractor represents and warrants that it has all necessary authority to enter into this Agreement, and that it is a binding enforceable Agreement according to its terms;
 - b. Contractor represents and warrants that the authorized representative(s) executing this Agreement is authorized to execute this Agreement on behalf of the Contractor; and
 - c. Contractor confirms its understanding that the information of EBCE Customers is of a highly sensitive confidential and proprietary nature, and that such information will be used as contemplated under the Disclosure Provisions solely for the purposes set forth on Schedule A and that any other use of the information is prohibited.

- d. Contractor represents and warrants that it will implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for purposes not set forth on Schedule A.
2. The confidential and proprietary information disclosed to Contractor in connection herewith may include, without limitation, the following information about EBCE Customers: (a) names; (b) addresses; (c) telephone numbers and email addresses; (d) service agreement numbers and account numbers; (e) meter and other identification numbers; (f) EBCE-designated account numbers; (g) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption, HP load, and other data detailing electricity or gas needs and patterns of usage); (h) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (i) payment / deposit status; (j) number of units; and (k) other similar information specific to EBCE Customers individually or in the aggregate (collectively, "Confidential Information"). Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Contractor or its representatives that are derived from or based on Confidential Information disclosed by EBCE, regardless of the form of media in which it is prepared, recorded or retained.
3. Except for electric and gas usage information provided to Contractor pursuant to this Agreement, Confidential Information does not include information that Contractor proves (a) was properly in the possession of Contractor at the time of disclosure; (b) is or becomes publicly known through no fault of Contractor, its employees or representatives; or (c) was independently developed by Contractor, its employees or representatives without access to any Confidential Information.
4. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Contractor, or used for any purpose other than the purposes set forth on Schedule A.
5. Contractor shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Contractor shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth on Schedule A. Specifically, Contractor shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of Contractor who have a "need to know" such Confidential Information in the course of their duties with respect to the Contractor program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, Contractor shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement. Contractor shall not disclose Confidential

Information or otherwise make it available, in any form or manner, to any other person or entity that is not Contractor's employee or representative (a "Third Party"), except where that Third Party has separately entered into a nondisclosure agreement with EBCE.

6. Notwithstanding Paragraph 5 above, Contractor may disclose Confidential Information to the extent required by an order, subpoena, or lawful process requiring the disclosure of such Confidential Information issued by a court or other governmental authority of competent jurisdiction, provided that Contractor notifies EBCE immediately upon receipt thereof to allow EBCE to seek protective treatment for such Confidential Information.
7. Contractor shall immediately notify EBCE if it reasonably believes that there has been unauthorized access to the Confidential Information by a non-authorized person that could reasonably result in the use, disclosure, or theft of the Confidential Information.
8. It shall be considered a material breach of this Agreement if Contractor engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Contractor understands that if EBCE finds that Contractor is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement EBCE shall promptly cease all disclosures of Confidential Information to Contractor. Contractor further understands that if EBCE receives a customer complaint about Contractor's misuse of data or other violation of the Disclosure Provisions, EBCE shall promptly cease disclosing that customer's information to Contractor and shall notify the California Public Utilities Commission of the complaint.
9. Contractor shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by EBCE directly against such employees or representatives for improper disclosure and/or use. In no event shall Contractor or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Contractor shall immediately notify EBCE in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Contractor or any of its employees or representatives. However, nothing in this Agreement shall obligate the EBCE to monitor or enforce the Contractor's compliance with the terms of this Agreement.
10. Contractor shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.
11. Within ten (10) business days of receipt of EBCE's written request, and at EBCE's option, Contractor will either return to EBCE all tangible Confidential Information, including but not limited to all electronic files, documentation, notes, plans, drawings, and copies thereof, or will provide EBCE with written certification that all such tangible Confidential Information of EBCE has been destroyed.

12. Contractor acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to EBCE and/or EBCE Customers, the amount of which may be difficult to assess. Accordingly, Contractor hereby confirms that the EBCE shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Contractor or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the EBCE, in law or equity.
13. In addition to all other remedies, Contractor shall indemnify and hold harmless EBCE, its officers, employees, or agents from and against and claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of Contractor and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
14. When Contractor fully performs the purposes set forth on Schedule A, or if at any time Contractor ceases performance or EBCE requires Contractor cease performance of the purposes set forth on Schedule A, Contractor shall promptly return or destroy (with written notice to EBCE itemizing the materials destroyed) all Confidential Information then in its possession at the request of EBCE. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.
15. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties hereto. This Agreement shall not be assigned, however, without the prior written consent of the non-assigning Party, which consent may be withheld due to the confidential nature of the information, data and materials covered.
16. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, understandings, communications, correspondence and representations, whether oral or written. This Agreement shall not be amended, modified or waived except by an instrument in writing, signed by both Parties, and, specifically, shall not be modified or waived by course of performance, course of dealing or usage of trade. Any waiver of a right under this Agreement shall be in writing, but no such writing shall be deemed a subsequent waiver of that right, or any other right or remedy.
17. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without reference to its principles on conflicts of laws.

[Remainder of Page Intentionally Left Blank - Signature Page to Follow]

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as of the Effective Date.

EAST BAY COMMUNITY ENERGY

BY: _____
(Signature)

(Name, Title)

Approve as to Form:

CONTRACTOR

BY: _____
(Signature)

(Name, Title)

(Address)

**SCHEDULE A
USE OF CUSTOMER INFORMATION**

Contractor's Purposes for Use of EBCE Customer Information

EBCE will provide Contractor with energy usage and building specific data for the purposes of bidding on EBCE's Energy Resilient Municipal Facilities RFO. Contractor will not use such information for any purposes outside of the RFO or provision of contracted services. Contractor will not use such information to market any services to site hosts not reviewed and approved by EBCE.