

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (“Agreement”) entered into by and between American Association of State, Highway and Transportation Officials (“AASHTO”), with offices at 444 North Capitol St. NW, Suite 429, Washington, D.C, 20001 and _____, located at _____ (“Contractor”) is effective as of _____, 20__.

Whereas, AASHTO has prepared a Request for Proposal (“RFP”) which it intends to make available to Contractor and others for the purpose of exploring the possibility of a mutually beneficial business relationship with AASHTO (“Business Relationship”); and

Whereas, Confidential Information of AASHTO will be disclosed in the Enhancement and Support of AASHTOWare Bridge Design-Rating RFP and the RFP Process; and

Whereas, Contractor desires to have access to the RFP and Confidential Information for the purposes of exploring a Business Relationship; and

Whereas, AASHTO requires Contractor to execute this Agreement as a condition precedent to receiving the RFP and Confidential Information.

NOW THEREFORE, in consideration of the mutual promises, covenants and obligations set forth below, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Confidential Information.

1.1 AASHTO, the party making the disclosure, is referred to hereunder as "Discloser" and Contactor, the party receiving the information, is referred to as "Recipient". All Confidential Information disclosed or otherwise made available to Recipient is subject to the terms and conditions of this Agreement. Recipient shall hold and maintain all Confidential Information in strict confidence and shall not use or disclose any Confidential Information, directly or indirectly, except for the limited purpose described hereunder.

1.2 “Confidential Information” means any and all information, documents, data and materials disclosed to or accessed by Recipient, directly or indirectly, in writing, orally, by inspection of tangible or intangible materials or otherwise in any form or medium, including but not limited to: Discloser’s RFP, proprietary ideas, concepts, patentable ideas, copyrights and/or trade secrets, “know how”, existing and/or contemplated products and services, computer or software programs and code, processes, system designs, schematics, research and development, data, work in progress, marketing and production plans, customers, user information, costs, finances and financial projections, and current, future or potential business plans whether specifically designated as confidential or not. Confidential Information also includes any Confidential and proprietary information of AASHTO members, and any information disclosed to Recipient by third parties at the direction of Discloser.

1.3 Confidential Information shall not include any information that: (i) is or becomes publicly available without Recipient's breach of any obligation owed to Discloser; (ii) is lawfully known to Recipient prior to the time of disclosure; or (iii) is disclosed by Recipient to satisfy the legal demand or order of a court of law or government agency; provided that prior to such disclosure, Recipient shall give Discloser notice of such order or demand so that the Discloser has a reasonable opportunity to defend, limit or protect against disclosure. Recipient shall assist in efforts to obtain an appropriate protective order or other assurance to protect the confidentiality of the information, and Recipient shall disclose only that portion of the Confidential Information which is legally required to be disclosed.

2. No Rights Granted.

All right, title and interest in and to the Confidential Information is and shall remain the exclusive property of Discloser. The disclosure of Confidential Information to Recipient shall not operate, by license or otherwise, as a grant, express or implied, of any right, title or interest under Discloser's patents, copyrights, trade or service marks, trade or business secrets information or any other intellectual or property right of the Discloser. All Confidential Information, and any derivative of it, whether created by Discloser or Recipient, remains the exclusive property of Discloser and no license or other rights to Confidential Information are granted to Recipient.

3. Authorized Use and Copying.

3.1. Recipient shall use the Confidential Information only for the purpose of evaluating and engaging in discussion concerning a potential Business Relationship with Discloser. Recipient shall not use or permit the use of any of the Confidential Information for its own benefit, nor for the benefit of any third party or for any other purpose except as authorized hereunder.

3.2 Recipient shall not disclose any Confidential Information except to its employees who are required to have the information in order to evaluate or engage in discussions concerning the contemplated Business Relationship. Recipient shall instruct all employees given access to Confidential Information to maintain confidentiality and to refrain from making unauthorized disclosure or copies. Recipient shall maintain appropriate written agreements with its employees who receive, or have access to, Confidential Information sufficient to enable it to comply with the terms of this Agreement.

3.3 Except as provided under 3.2, Recipient shall not disclose Confidential Information to any person, entity or third party without the express written permission of an authorized officer or representative of Discloser. Permission to disclose Confidential Information to a third party, if any, shall include the requirement that the third party sign a non-disclosure agreement acceptable to Discloser.

3.4 Recipient shall not reproduce or make any copies of Confidential Information without the prior written consent of Recipient. All copies of Confidential Information shall be and remain the property of Disclosing party. Recipient shall reproduce Discloser's copyright and proprietary rights notices on any approved copies, in the same manner in which such notices were set forth in the original.

4. Protection of Confidential Information

4.1 Recipient agrees to use all commercially reasonable efforts to protect the secrecy of the Confidential Information and avoid unauthorized disclosure, use, access, copying or misappropriation, including without limitation, all steps Recipient uses to protect its confidential and proprietary information and trade secrets.

4.4 Recipient shall notify Discloser in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information by Recipient or a third party or any other breach of this Agreement, and shall fully cooperate with Discloser in every reasonable way to help Discloser regain possession and control of the Confidential Information and prevent its further unauthorized use or disclosure. Recipient's compliance with this paragraph shall not limit Discloser's right to pursue any rights or remedies available at law or equity for breach of this Agreement.

4.5 Recipient shall not reverse engineer, decompile or disassemble any Confidential Information or attempt to derive the composition or underlying information of any software or other materials which embody Discloser's Confidential Information .

5. No Warranties.

DISCLOSER PROVIDES THE CONFIDENTIAL INFORMATION ON AN "AS IS" BASIS AND MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE, EITHER EXPRESS OR IMPLIED, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ERROR FREE OPERATION.

6. Return of Materials.

This Agreement shall terminate immediately upon the earlier of: (i) Discloser notifying Recipient to discontinue use of the Confidential Information, or (ii) either party notifying the other that it no longer wishes to pursue a Business Relationship. Within five (5) days of the date of such notification, Recipient shall return all Confidential Information under its possession and control to Discloser, including all originals, copies, reproductions, notes, summaries and analyses of the Confidential Information, and remove and destroy all Confidential Information from all retrieval systems and databases. Recipient shall not retain any copies of the Confidential Information in any form or media.

7. Survival of Obligations.

Regardless of whether a Business Relationship occurs, the rights and obligations of this Agreement shall survive and continue for a period of seven (7) years from the date of disclosure of the Confidential Information; provided Recipient's obligations to keep and maintain the confidentiality of any trade secrets of Discloser shall continue for as long they remain trade secrets.

8. Injunctive Relief

Recipient acknowledges and agrees that monetary damages may not be an adequate remedy for a breach of this Agreement and that Discloser shall be entitled to equitable relief, including injunction and specific performance, without the necessity to post a bond, in the event of any breach of this Agreement by Recipient. Such remedies, however, shall not be deemed to be the exclusive remedies for any breach of this Agreement but shall be in addition to all other remedies available at law or in equity. In the event of breach of this Agreement by Recipient, Discloser shall be entitled to recover its costs and reasonable attorneys' fees in connection with any action brought by Discloser to enforce the terms of this Agreement including any action for damages and/or injunctive relief.

9. Choice of Law; Jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia without giving effect to its conflicts of law rules. Both parties further consent to the exclusive jurisdiction and venue of the municipal and federal courts located in the District of Columbia.

10. No Obligation.

The exchange of information under this Agreement shall not commit or bind either party to any present or future contractual relationship, nor shall the exchange of information be construed as an inducement to act or not to act in any given manner. Discloser shall not be liable for any expenses or losses incurred or any action undertaken by Recipient as a result of the receipt of Confidential Information.

11. Miscellaneous

11.1 Recipient shall at all times be and remain an independent contractor, and execution of this Agreement does not in any way constitute a partnership or joint venture between the parties.

11.2 Neither party may assign this Agreement or any rights or obligations under it, without the prior written consent of the other party and any attempt to do so is void. Subject to the limitations set forth herein, this Agreement will inure to the benefit of and be binding upon the parties and their successors and permitted assigns.

11.3 If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. Should any of the obligations of this Agreement be found illegal or unenforceable as being too broad with respect to the duration, scope or subject matter thereof, such obligations shall be deemed and construed to be reduced to the maximum duration, scope or subject matter allowable by law.

11.4 None of the provisions of the Agreement shall be deemed to have been waived by any act or acquiescence on the part of Discloser, its agents, or employees, but only by an instrument in writing signed by an authorized officer of Discloser. No waiver of any provision of the Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

11.5 This Agreement may be executed in counterparts and by electronic transmission.

11.6 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior discussions or writings. This Agreement may not be modified except by a written agreement signed by authorized officers or representatives of both parties.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have executed this Agreement as of the date first set forth above.

For AASHTO:

For CONTRACTOR:

Name: Jim Tymon

Name: _____

Signature _____

Signature _____

Title: Executive Director

Title: _____