

**Project title:** Confidentiality and Non-Disclosure Agreement with Snohomish County Public Utility District No. 1 for Highway Place Electrical Substation Drawings

**Council Bill #**

**Agenda dates requested:**

04/14/2021

Briefing

Proposed action

Consent

Action

Ordinance

Public hearing

Yes  No

**Budget amendment:**

Yes  No

**PowerPoint presentation:**

Yes  No

**Attachments:**

PUD Non-Disclosure Agreement

**Department(s) involved:**

Public Works, Legal

**Contact person:**

Randy Loveless

**Phone number:**

425-257-8825

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**Initialed by:**

*RLS*

Department head

Administration

Council President

**Consideration:** Confidentiality and Non-Disclosure Agreement

**Project:** Evergreen Pump Station

**Partner/Supplier:** Snohomish County PUD No. 1

**Location:** Evergreen Pump Station

**Preceding action:** None

**Fund:** N/A

**Fiscal summary statement:**

No fiscal impact or financial obligations are associated with this agreement.

**Project summary statement:**

In order to complete their design of electrical upgrades to the Evergreen Pump Station the City design consultants require access to electrical substation drawings that Snohomish County PUD No. 1 (PUD) have on-file. As the drawings of interest relate to critical energy infrastructure, the PUD requires the City sign the attached Confidentiality and Non-Disclosure Agreement prior to releasing this information.

**Exact action requested of Council:** Authorize the Mayor to sign the Confidentiality and Non-Disclosure Agreement with Snohomish County Public Utility District No. 1 for Highway Place Electrical Substation Drawings

## **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This confidentiality and non-disclosure agreement, between the City of Everett, and Public Utility District No. 1 of Snohomish County, Washington (the "District"), a Washington State municipal corporation, will become effective when all parties have signed it. THE ENTIRETY OF THIS AGREEMENT IS SUBJECT TO SECTION 20 BELOW.

The City of Everett and/or the District may provide information to the other or otherwise grant the other access to information that includes valuable business information, security information, personal information of the City of Everett's or the District's customers, or other protected information. This information is disclosed for the sole use of the Receiving Party in connection with services or products to be provided to the Disclosing Party.

To maintain the confidentiality and protection of such information, and with reference to the above purposes, the parties agree as follows:

### **1. Definition of Confidential Information**

"Confidential Information" refers to information that (i) is maintained in confidence by or on behalf of a party, referred to as the "Disclosing Party," and (ii) disclosed or otherwise accessed by the other party, referred to as the "Receiving Party," in connection with Receiving Party's work for or with the Disclosing Party. Such work may be performed pursuant to one or more separate contracts between the parties. Confidential Information may be disclosed or accessed in written form, electronically, orally, or visually presented.

Confidential Information shall include "proprietary customer information" and "private customer information," both as defined in RCW 19.29A.010 (collectively referred to herein as "PCI").

Information that is made available to the Receiving Party in connection with this agreement will not be considered Confidential Information unless the information is either: (a) so identified by an appropriate legend indicating its confidential nature; or (b) identified by the Disclosing Party as confidential information at the time of disclosure and confirmed as such by written summary provided to the Receiving Party either prior to or within 30 days following the original disclosure. This marking requirement does not apply to information that would be recognized by a reasonable person familiar with the type of information in question as clearly being Confidential Information.

### **2. Definition of Critical Energy/Electric Infrastructure Information**

Some of the information disclosed may constitute Critical Energy/Electric Infrastructure Information and require special protections. The term "Critical Energy/Electric Infrastructure Information," or "CEII," is a collective term for the four categories of information defined in 18 C.F.R. §§ 388.113(c). For purposes of this agreement, CEII shall also include any information which may be described as non-public transmission or distribution information including, but not limited to, the following: maps, charts, and diagrams, including location, longitude and latitude for

the District's electric system or any other electric system; and system studies including flow studies, models, "base cases" and system planning for the District or any other electric system. All CEII is also Confidential Information and shall be protected under the terms of this agreement. Given the sensitive nature of CEII, the Receiving Party has a higher duty of care to maintain the confidentiality of this information.

### **3. Use and Protection of Confidential Information**

The Receiving Party shall limit disclosure of any Confidential Information to individuals who have a need to know such Confidential Information in connection with business discussions and/or contracted-for work between the Parties, and only for that purpose, *provided that* such individuals have been made aware of this agreement and the obligations herein regarding such Confidential Information (such individuals to be referred to herein as "Representatives"). The Receiving Party shall not make any other use, in whole or in part, of any such Confidential Information without the prior written consent of the Disclosing Party. The Receiving Party shall be responsible for any breach of this agreement by any of its Representatives.

To the extent the Receiving Party has been provided PCI, the Receiving Party agrees not to utilize such information for purposes of marketing services or product offerings to the District's retail electric customers (see RCW 19.29A.100).

The Receiving Party further agrees to: (i) keep and maintain all Confidential Information strictly confidential, using such commercially reasonable care as is appropriate to avoid unauthorized access, use, or disclosure of such information, including implementing reasonable administrative, physical, and technical safeguards designed to protect such information, but no less rigorous than that used to safeguard its own information; and (ii) comply with all state and federal privacy and data protection laws and regulations applicable to the Receiving Party, including the collection, access, use, storage, disposal, and disclosure of Confidential Information.

### **4. Additional Requirements for Protection of Critical Energy/Electric Infrastructure Information**

With respect to all CEII provided by the District to the Receiving Party, or where the Receiving Party otherwise has access to CEII, whether or not specifically identified, the Receiving Party shall: (i) comply with all written requirements and instructions furnished by the District; (ii) treat all CEII confidential as required elsewhere in this agreement; and (iii) if instructed by the District to file any CEII with any federal, state, or local government, prominently mark such information as Critical Energy/Electric Infrastructure Information and ensure that such information is protected in accordance with all applicable laws and regulations, including 18 C.F.R. § 388.112 and 113 for requesting special treatment of the CEII.

### **5. Compelled Disclosure of Confidential Information**

Where the Receiving Party receives a lawful request or order to disclose Confidential Information, including without limitation,

pursuant to the requirements of a regulatory or governmental agency, subpoena, court order, discovery, request pursuant to the Washington State Public Records Act (Chapter 42.56 RCW), or other operation of law, the Receiving Party will not release the requested Confidential Information sooner than ten days (or such shorter amount of days as the law will allow, if the law does not allow for ten days) after giving the Disclosing Party written notice (including by electronic mail) to allow the Disclosing Party to obtain an order preventing its release. The Receiving Party will cooperate in good faith in any such effort or pursuit. In the event no such protective order is obtained within the aforementioned period, the Receiving Party is permitted to comply with the request for disclosure without liability under this agreement.

## **6. Exceptions to Confidentiality Obligations**

The Receiving Party's obligations under this agreement do not extend to:

- a. Information which, at the time of disclosure, is in the public domain;
- b. Information which shall become part of the public domain after disclosure other than as a consequence of a breach of this agreement;
- c. Information which is obtained from a third person who, insofar as is known to the Receiving Party, is not prohibited from transmitting the information;
- d. Information which was already known by the Receiving Party prior to its disclosure; or
- e. Information that is disclosed by the Receiving Party with the Disclosing Party's prior written approval.

To the extent a portion of the disclosed information is already in the public domain, such information shall not be deemed confidential merely by its reference or inclusion in the information disclosed pursuant to this agreement.

## **7. Term**

The term of this agreement shall commence on the Effective Date and shall remain in effect until all of the Confidential Information, provided by the Disclosing Party to Receiving Party under this Agreement is either (i) no longer classified by the Disclosing Party as Confidential Information, (ii) returned to the Disclosing Party by Receiving Party, or (iii) destroyed by Receiving Party.

## **8. Notice of Breach**

The Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by the Receiving Party or its Representatives, whether such disclosure occurs through action or inaction, and shall assist the Disclosing Party to regain possession of Confidential Information and prevent its further unauthorized use. The Receiving Party shall cooperate in prosecuting any claims against third parties for unauthorized use and shall bear all costs associated with pursuing those claims. The Disclosing Party, in addition to any money damages, shall be entitled to obtain an injunction prohibiting the further breach of this agreement without the necessity of posting or filing a bond or other security, even if otherwise required.

## **9. Injunctive Relief**

Each party acknowledges that disclosure or use of Confidential Information in violation of this agreement could cause irreparable harm to the Disclosing Party for which monetary damages may be difficult to ascertain or be an inadequate remedy. Therefore, each party will have the right, in addition to its other rights and remedies, to seek and obtain injunctive relief for any violation of this agreement.

## **10. Representations and Warranties**

The Disclosing Party warrants that it has the right to disclose the Confidential Information to the Receiving Party. EXCEPT FOR THE FOREGOING, ALL CONFIDENTIAL INFORMATION DISCLOSED PURSUANT TO THIS AGREEMENT IS PROVIDED ON AN "AS IS" BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE. THE RECEIVING PARTY SHALL USE AND RELY UPON THE DISCLOSING PARTY'S CONFIDENTIAL INFORMATION AT THEIR SOLE RISK AND EXPENSE.

## **11. Ownership of Confidential Information**

All Confidential Information will remain the exclusive property of the Disclosing Party, and no license or conveyance of any right under any copyright, patent, or other intellectual property right of the Disclosing Party is granted to the Receiving Party under this agreement, other than the limited right to review the Confidential Information as provided above.

## **12. Entire agreement**

This agreement constitutes the entire understanding between the parties and supersedes and cancels any and all prior or contemporaneous negotiations, understandings, and agreements, whether oral or written, between the parties, with respect to the subject matter hereof.

## **13. Amendments**

This agreement may not be amended or modified, and no obligation may be waived, except by a writing expressly referencing this agreement and signed by authorized representatives of all parties.

## **14. No Waiver**

The invalidity or unenforceability of any provision or provisions of this agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect. No failure by either party to exercise any right arising from a default by the other party shall impair that right or constitute a waiver of it. No waiver by either party of any covenant to be performed by the other shall constitute a waiver of any later breach or covenant.

## **15. Assignment**

Neither party may directly or indirectly assign or transfer its rights under this agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

## **16. Governing Law**

This agreement shall be governed by, and construed in accordance with, the laws of the state of Washington, without regard to

conflict of laws or choice of laws provisions. The parties hereby consent to jurisdiction in the state of Washington and agree that the courts within the state of Washington will have exclusive jurisdiction over any disputes or claims arising out of or related to this agreement.

**17. Headings**

Paragraph headings used in this agreement are for reference only and shall not be used or relied upon in the interpretation of this agreement.

**18. Counterparts**

This agreement may be executed in counterparts, which when taken together will constitute one and the same instrument. Any such counterparts may be a facsimile or electronic transmission copy thereof, which shall be as valid and effectual as the original of that counterpart.

**19. Effectiveness; Date**

Date: \_\_\_\_\_, 2021

Date: \_\_\_\_\_, 2021

This agreement will become effective when all parties have signed it. The date of this agreement will be the date this agreement is signed by the last party to sign it (as indicated by the date associated with that party’s signature).

**20. LIMITATION ON APPLICABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THIS AGREEMENT ONLY APPLIES TO THE “HIGHWAY PLACE ELECTRICAL SUBSTATION DRAWINGS” PROVIDED BY THE DISTRICT TO THE CITY OF EVERETT. THE HIGHWAY PLACE ELECTRICAL SUBSTATION DRAWINGS ARE THE SOLE CONFIDENTIAL INFORMATION, PCI, AND CEII COVERED BY THIS AGREEMENT. THE CITY OF EVERETT HAS NO OBLIGATIONS WHATSOEVER UNDER THIS AGREEMENT WITH RESPECT TO ANY DRAWING, DOCUMENT, RECORD OR INFORMATION THAT IS NOT THE HIGHWAY PLACE ELECTRICAL SUBSTATION DRAWINGS.

**CITY OF EVERETT, WASHINGTON**

By: \_\_\_\_\_  
Name:  
Title:

**PUBLIC UTILITY DISTRICT NO. 1  
OF SNOHOMISH COUNTY, WASHINGTON**

By: \_\_\_\_\_  
Name:  
Title: