



NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (the "**Agreement**") is entered into as of October 17, 2023 by and between GridWatch LLC (the "**Disclosing Party**") and the City of Santa Fe (the "**Recipient**," and together with the Disclosing Party, the "**Parties**," and each a "**Party**").

RECITALS:

A. The Parties wish to explore the possibility of entering into a business transaction (the "**Purpose**"), which exploration may require or has required the Disclosing Party to disclose information that it considers and protects as confidential and/or proprietary.

B. The Disclosing Party desires that the Recipient respect the confidential and/or proprietary nature of the information disclosed, use that information only for the Purpose and protect such information from unauthorized use or disclosure.

Therefore, the Parties agree, in consideration of the mutual covenants and provisions set forth below and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the disclosure of the Confidential Information as anticipated by this Agreement, such disclosure is subject to the following terms and conditions:

AGREEMENT

1. Confidential Information.

(a) This Agreement applies to all information disclosed by or behalf of the Disclosing Party to the Recipient or otherwise obtained by the Recipient, whether disclosed orally, in writing or by any other media, which information (i) is considered, protected, and maintained as confidential or proprietary by Disclosing Party, or (ii) a reasonable person would understand to be confidential based on the nature of the information and the circumstances of disclosure ("**Confidential Information**"). The Disclosing Party's Confidential Information expressly includes without limitation, all of the following: product plans and operations, business models, product designs, materials lists, suppliers, current and future products/projects and marketing plans, markets where such products are intended to be sold and the size of such markets, schematics, product specifications and formularies, software, computer programs and processes, know-how, ideas, trade secrets and technology, algorithms, analytical methodology, product applications including efficacy data, agreements, contracts, licenses, business circulars, prospectuses, memoranda, drawings, models, samples, client lists, supplier lists, projections, and financial information.

(b) Confidential Information includes the fact that the Parties have entered into the subject discussions regarding the Purpose.

(c) Any evaluation or analysis of the Confidential Information, and any information generated or supplied in response to the Confidential Information or otherwise revealed or discovered during the course of either Party's examination of the Purpose, is also considered part of the Disclosing Party's Confidential Information and protected as such. Recipient acknowledges and agrees that it shall not disclose to Disclosing Party, or seek to induce Disclosing Party to use, any confidential information of a



third party, unless Disclosing Party has appropriate agreements in place regarding the disclosure or use of such information.

(d) All Confidential Information, and all right, title, and interest to the same, including any intellectual property rights therein, is and remains the sole and exclusive property of Disclosing Party.

2. Non-Disclosure.

(a) The Recipient will hold the Disclosing Party's Confidential Information in strict confidence. The Recipient will not disclose or reveal the Disclosing Party's Confidential Information, directly or indirectly, to any third party (including without limitation any affiliate, subsidiary, or parent of the Recipient) without the prior written consent of the Disclosing Party, subject to New Mexico's Inspection of Public Records Act (IPRA). Notwithstanding the foregoing, the Recipient may disclose the Confidential Information only to those of its employees, officers, directors, and professional advisors who need to know the Confidential Information in order to evaluate and carry out the Purpose (collectively, "Representatives"), provided the Recipient has (i) informed each such Representative of the confidential and proprietary nature of the Confidential Information, (ii) instructed each Representative to whom it intends to disclose the Confidential Information that such Confidential Information is confidential and/or proprietary and (iii) required such Representative to maintain the confidential nature of the Confidential Information pursuant to a written agreement (or professional obligation) with terms at least as protective as this Agreement. The Recipient is responsible for its Representatives' receipt and use of the Disclosing Party's Confidential Information, including without limitation compliance with the terms of this Agreement, as though all such acts and omissions of the Representatives are the acts and omissions of Recipient.

(b) The Recipient shall protect and safeguard the Disclosing Party's Confidential Information against unauthorized use or disclosure with at least the same degree of care as the Recipient uses to protect its own Confidential information, but in no event with less than a commercially reasonable degree of care.

3. Limitation on Use.

(a) The Recipient shall use the Disclosing Party's Confidential Information solely to evaluate the Purpose and solely for the benefit of the Disclosing Party. Recipient shall not use Confidential Information for the purpose of acquiring intellectual property rights (including patents) incorporating, or relating to, such Confidential Information or to, indirectly or directly, frustrate the purposes of this Agreement or circumvent, appropriate or interfere with Disclosing Party's existing or prospective contracts or business relationships or otherwise compete with Disclosing Party.

(b) The Recipient shall not remove, obscure, or alter any notice of patent, trademark, trade secret, or other proprietary right from the Disclosing Party's Confidential Information, nor may the Recipient modify, reverse engineer, decompile, disassemble, or create other works from any Confidential Information of the Disclosing Party.

(c) Recipient will not make any copies, duplications or other recreations of the Confidential Information without the express written permission of Disclosing Party, except as strictly necessary to evaluate the Purpose. Any such copies, duplications and other recreations of the Confidential Information, including without limitation any notes or other documentation incorporating the same, in



whole or in part, will also be Disclosing Party's Confidential Information and subject to the restrictions of this Agreement.

(d) Recipient may not commingle any Confidential Information with any information or materials of Recipient or any third party.

4. Exclusions.

(a) The provisions of this Agreement do not apply to information which the Recipient can reasonably prove: (i) at the time of disclosure was in the public domain; (ii) becomes generally available to and known by the public other than as a result of any act or omission by the Recipient or its Representatives; (iii) was lawfully in the Recipient's possession prior to the date of disclosure without any restriction on use or disclosure; (iv) was independently developed by the Recipient without use of or reference to the Disclosing Party's Confidential Information; or (v) was disclosed to the Recipient without any restrictions on use or disclosure by an independent third party not prohibited from disclosing such information by any legal, fiduciary, or contractual obligation.

(b) If the Recipient is required to disclose Confidential Information pursuant to 1) a valid order issued by a governmental agency, 2) a court of competent jurisdiction, or 3) a public records request, the Recipient will give the Disclosing Party reasonable written notice so that the Disclosing Party may contest the disclosure or seek a protective order to the extent permitted by law. The Recipient further agrees that if the Disclosing Party is not successful in precluding the requesting legal body from requiring the disclosure of Confidential Information, it will furnish only that portion of Confidential Information that is legally required, will promptly provide the Disclosing Party with a copy of the Confidential Information so furnished, and will exercise all reasonable efforts to obtain reliable assurances that the receiving party will accord such Confidential Information confidential treatment.

5. Term. The terms of this Agreement and the restrictions and the limitations on the use and disclosure of Confidential Information shall remain effective as to any particular piece of Confidential Information until any of the conditions of Section 4(a)(i)-(v) applies to such piece of Confidential Information, except with respect to Confidential Information that consists of trade secrets as defined by law for which such protection remains effective as long as such Confidential Information qualifies as a trade secret under applicable law.

6. No Obligation. This Agreement does not create a relationship of agency, partnership, or joint venture between the parties. Nothing in this Agreement requires the disclosure to Recipient of any Confidential Information, which shall be disclosed, if at all, solely at the Disclosing party's option. Nothing contained in this Agreement shall be construed by implication or otherwise as an obligation, express or implied, to enter into any further agreement concerning the Confidential Information or the Purpose.

7. No Rights Granted. Nothing in this Agreement shall be construed as granting to the Recipient or its Representatives any rights to use or commercialize any Confidential Information or any patent, copyright, trade secret, or other intellectual property right of the Disclosing Party, whether or not embodied in such Confidential Information, nor shall this Agreement grant the Recipient or its Representatives any rights in or to the Disclosing Party's Confidential Information other than the limited right to review such Confidential Information solely for the Purpose.



8. Return or Destruction of Confidential Information. The Recipient, upon termination of the Purpose as agreed upon by the Parties in writing or upon the Disclosing Party's written request, will promptly, as the Disclosing Party directs, return or destroy all Confidential Information received by the Recipient and its Representatives, together with all tangible copies within the Recipient's or its Representatives' possession, custody or control, in any and all forms, formats and media, and certify in writing that all such Confidential Information and all such copies thereof have been returned or destroyed. In the event of termination of the Purpose, such return or destruction and subsequent certification of destruction will occur no later than thirty (30) days after termination.
9. Notification. Should the Recipient determine or reasonably suspect that unauthorized use or disclosure of Confidential Information has taken place, the Recipient will immediately notify the Disclosing Party and reasonably cooperate to regain possession, prevent further unauthorized use, and mitigate the consequences of the unauthorized use or disclosure at Recipient's sole cost and expense.
11. Disclaimer. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS" AND "WITH ALL FAULTS." THE DISCLOSING PARTY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ACCURACY, COMPLETENESS, OR PERFORMANCE OF THE CONFIDENTIAL INFORMATION. THE DISCLOSING PARTY SHALL NOT BE LIABLE TO THE RECIPIENT OR ITS REPRESENTATIVES IN ANY WAY RELATING TO OR RESULTING FROM THE RECIPIENT'S USE OF ANY CONFIDENTIAL INFORMATION OR ANY ERRORS THEREIN.
12. Remedies. The Recipient agrees that monetary damages are an insufficient remedy for a breach of this Agreement or any unauthorized disclosure or use of Confidential Information, which unauthorized disclosure or use would constitute irreparable harm. Accordingly, the Disclosing Party may seek injunctive relief, an order compelling specific performance, or other equitable relief without posting of a bond or other similar restriction, in addition to all other remedies available at law or in equity, in the event of a breach or threatened breach of this Agreement or disclosure of Confidential Information.
13. Publicity. Unless expressly permitted by this Agreement, the Recipient shall not disclose to any other party the fact that Confidential Information of the Disclosing Party has been and/or may be disclosed under this Agreement, that discussions or negotiations are taking place between the Parties, or any of the terms, conditions, status or other facts with respect thereto, except as required by law and then only with prior notice as soon as possible to the Disclosing Party.
14. Miscellaneous.
- (a) Governing Law; Jurisdiction and Venue. In the event that either Party commences any legal or equitable action or proceeding in order to enforce, interpret, reform, rescind or in any other manner effect the provisions of and/or relating to this Agreement, such proceeding will be commenced exclusively in the state and federal courts located in or with jurisdiction over the State of New Mexico. This Agreement will be construed and performed exclusively under the laws of the State of New Mexico without giving effect to any choice or conflict of law rule or principle.
- (b) Assignment. Neither Party may assign any of its rights or delegate any of its obligations hereunder, either voluntarily or by operation of law, without the prior written consent of the other Party. Any purported assignment in violation of this Section is null and void. No assignment shall relieve



the assigning Party of any of its obligations hereunder. This Agreement is binding upon and will inure to the benefit of the Parties, their legal representatives, successors, and permitted assigns.

(c) Notice. All notices, demands, and other communications required by this Agreement must be in writing and sent to the addresses set forth below via hand delivery, reputable overnight courier service and/or via a confirmed receipt email by all Parties sent to the email addresses below. Any notice shall be deemed received (i) immediately upon personal delivery, (ii) three (3) business days after posting it in the U.S. mail, (iii) the next day after submission to a reputable overnight courier or (iv) upon transmission by email with confirmed receipt in possession of sender.

(d) Entire Agreement. This Agreement (i) supersedes and cancels all previous agreements, written or oral, between the Parties regarding the disclosure of Confidential Information with respect to the Purpose, (ii) contains the entire agreement between the Parties regarding the disclosure of Confidential Information in relation to the Purpose, (iii) may not be altered or waived other than by a writing signed by both Parties.

(e) Export Compliance. The Recipient will adhere to all applicable United States and foreign export control laws and regulations and will not export or re-export any Confidential Information or other technical data or products to any proscribed country listed in the U.S. Export Administration regulations, or foreign national thereof, unless properly authorized by the U.S. Government.

(f) Severability. In the event any arbitrator or court of competent jurisdiction should find any provision of this Agreement to be unenforceable or invalid, such provision will be modified to the minimum extent possible to make it enforceable and valid. In the event such modification should prove impossible or impracticable the offending provision will be severed from the Agreement. The validity, enforceability, or legality of the remaining provisions will not be affected.

(g) Stock. Both Parties are aware of and bound by all laws and regulations regarding prohibition of "insider trading" of stock.

(h) Counterparts. This Agreement may be executed in any number of counterparts. Each counterpart is an original and all of which when taken together constitute one and the same instrument. One or more counterparts of this Agreement may be delivered via telecopier or electronically in PDF format; these formats have the same effect as an original executed counterpart.



IN WITNESS WHEREOF, this Agreement has been executed by duly authorized representatives of the Parties to become effective as of the date referenced in the preamble.

GridWatch LLC

Signature 

Name

Matt Hendrickson

Title

CEO

Date 24 Sept 2023

Email: matt.hendrickson@gridwatchems.com

Address: P.O. Box 866, Cortaro, AZ 85652

City of Santa Fe

Signature 
John Blair (Oct 16, 2023 19:23 MDT)

Name

John Blair

Title

City Manager

Date 10/16/2023

Email: jwblair@santafenm.gov

Address: 900 Lincoln Ave, Santa Fe, NM 87501

City of Santa Fe ADDENDUM

This agreement incorporates the additional terms and conditions in the addendum between GridWatch, LLC (Disclosing Party) and the CITY OF SANTA FE (Recipient).

TERMINATION

This Agreement may be terminated by RECIPIENT upon 30 days written notice to the GRIDWATCH.

INDEMNIFICATION

GRIDWATCH shall indemnify, hold harmless and defend RECIPIENT from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from GRIDWATCH's performance under this Agreement as well as the performance of GRIDWATCH's employees, agents, representatives and subcontractor.

NEW MEXICO TORT CLAIMS ACT

Any liability incurred by RECIPIENT in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. RECIPIENT and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

APPLICABLE LAW; CHOICE OF LAW; VENUE

GRIDWATCH shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of RECIPIENT of Santa Fe. In any action, suit or legal dispute arising from this Agreement, GRIDWATCH agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

RELEASE

GRIDWATCH, upon acceptance of final payment of the amount due under this Agreement, releases the CITY, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. GRIDWATCH agrees not to purport to bind RECIPIENT to any

obligation not assumed herein by RECIPIENT unless GRIDWATCH has express written authority to do so, and then only within the strict limits of that authority.

THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than RECIPIENT and GRIDWATCH. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third-party beneficiary of this Agreement.

SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

Signature Lines required:

City of Santa Fe:
John Blair
John Blair (Oct 16, 2023 19:23 MDT)
John Blair, City Manager

GRIDWATCH:
[Signature], CEO
Name & Title

Date: 10/16/2023

Date: 24 Sept 2023

Attest:

[Signature]
Geralyn Cardenas (Oct 17, 2023 10:50 MDT)
Geralyn Cardenas, Interim City Clerk *XIV*

City Attorney's Office:
Marcos Martinez
Marcos Martinez (Oct 16, 2023 09:16 MDT)
Senior Assistant City Attorney

Approved for Finances:
Emily K. Oster
Emily K. Oster (Oct 16, 2023 17:44 MDT)
Emily Oster, Finance Director

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Environmental Services Division

Recycling | Trash | Sustainability

Keep Santa Fe Beautiful

DATE: October 16, 2023

To: John Blair, City Manager

From: Neal Denton, Sustainability Officer

Subject: GridWatch Non-Disclosure Agreement

The Environmental Services Division is seeking a cost estimate from the GridWatch in order to prepare a grant application for the New Mexico Energy, Minerals, and Natural Resources Department Grid Modernization Program in 2024. GridWatch offers energy management solution software that can save the City of Santa Fe money by eliminating energy waste. The vendor is requiring a non-disclosure agreement in order to provide a cost estimate. This is being done to evaluate the cost/benefit of pursuing these services. The Environmental Services Division is not procuring these services at this time.

ESD respectfully requests your signature on the attached non-disclosure agreement.

23-0614 GridWatch, LLC

Final Audit Report

2023-10-17

Created:	2023-10-17
By:	Xavier Vigil (xivigil@ci.santa-fe.nm.us)
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-  Document created by Xavier Vigil (xivigil@ci.santa-fe.nm.us)
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-  Document e-signed by Geralyn Cardenas (gfcardenas@santafenm.gov)
Signature Date: 2023-10-17 - 4:50:03 PM GMT - Time Source: server- IP address: 65.133.115.165
-  Agreement completed.
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