

CONFIDENTIALITY AGREEMENT

This Agreement is entered into this 8th day of July, 2008, between the **City of Leesburg, Florida** (the “City” or “Client”) and **Plexus Research**, a division of R. W. Beck, Inc. (“Plexus”) with respect to the following facts:

- A. Plexus is engaged in the business of providing consulting services to utilities that pertain to applications of metering, control, data communications, information management and energy automation.
- B. Plexus may provide certain tools, templates, documents, technology and vendor assessments, and industry insights in written or verbal form that are considered sensitive, and shall be accorded suitable protection from disclosure to other parties.
- C. The City is engaged in the business of providing utility services in and about the city of Leesburg, Florida.
- D. The City may provide certain strategic, technical, economic, regulatory or legal information in written or verbal form to Plexus that is considered sensitive, and shall be accorded suitable protection from disclosure to other parties.
- E. As stated above, it is anticipated that each party will furnish (“the Disclosing Party”) to the other party (the “Receiving Party”) certain information which is either non-public, confidential or proprietary in nature and the parties desire to protect the confidentiality of this information as appropriate.

NOW, THEREFORE, in consideration of permitting the disclosure between the parties of certain information and the promises contained herein, the parties agree as follows.

1. Receiving Party will keep confidential all information identified and/or marked as confidential by the Disclosing Party (the “Information”), and, except as otherwise permitted herein, will not disclose or use the Information in whole or in part other than in connection with assisting the City in matters pertaining to an advanced metering infrastructure (the “Project”). Receiving Party agrees to reveal the Information only to its agents, representatives, attorneys or employees who need to know the Information for the purpose of completing the Project, who are informed of the confidential nature of the Information, and who agree to act in accordance with the terms of this Agreement.
2. Receiving Party will not be prohibited from disclosing or using any information that:
 - a. is or becomes generally available to the public other than as a result of a disclosure by Receiving Party;
 - b. was already in Receiving Party’s possession before any disclosure of the Information by the Disclosing Party;
 - c. has been or is obtained by Receiving Party from a third party (other than one acting on behalf of the Disclosing Party) who Receiving Party has no reason to believe is not lawfully in possession of the Information and who Receiving Party has no reason to believe is in violation of any contractual, legal or fiduciary obligation to the Disclosing Party with respect to the Information;



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- d. is required to be disclosed by a subpoena or other directive of a court, administrative agency, quasi-judicial body or arbitration panel provided, if legally permitted, the Receiving Party notifies the Disclosing Party promptly so that the Disclosing Party may seek an appropriate protective order. In the event no such protective order or other remedy is obtained, the Receiving Party will furnish only that portion of the Information that its legal counsel advises is legally required to be disclosed; or
 - e. is independently developed by Receiving Party.
3. Except as contemplated above, the Information shall not be disclosed to any person or entity by either party without the prior written authorization of other party. Each party shall be responsible and liable for any misuse or wrongful disclosure of the Information in violation of this Agreement and for any other breach of any obligations pursuant to this Agreement.
 4. All drawings, programs, software, data, financial information and other written Information submitted by the Disclosing Party to Receiving Party or its representatives shall be promptly returned to the Disclosing Party upon its request. Receiving Party may retain one archival copy of the Information for its internal record-keeping purposes; provided such copy is retained in accordance with the confidentiality restrictions in this Agreement.
 5. The parties agree that, except as may be specified in a definitive agreement between the parties, neither party shall have any liability for any errors or omissions, for any damages, or otherwise in any manner, embodied in any Information or other information furnished or not furnished pursuant to this Agreement. Each party shall rely solely on their own investigations, interpretations and analyses.
 6. The parties acknowledge that remedies at law may be inadequate to protect against actual or threatened breach of this Agreement and, without prejudice to any other rights and remedies otherwise available, the parties agree to seek specific performance and injunctive or other equitable relief without any requirement to prove the monetary extent of any damages that may result from such breach. The parties agree to waive any requirement to secure or post of any bond in connection with any such remedy.
 7. In any action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover, as part of its judgment, reasonable attorneys' fees and costs from the other party.
 8. In no event shall either party be liable for any consequential, indirect, special or punitive damages.
 9. If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and the provision declared invalid or unenforceable shall continue as to other circumstances.
 10. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington.
 11. This Agreement will terminate three years from the date hereof.

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- 12. This Agreement is binding upon and will inure to the benefit of the Disclosing Party and Receiving Party and their respective successors and assigns.
- 13. Notwithstanding anything to the contrary, the terms and conditions of this Agreement are subject to Chapter 119, Florida Statutes, and any other statute regulating Florida Public Records. Plexus understands and agrees that Client may release any information addressed in this Agreement, regardless of whether Plexus considers the information to be confidential or sensitive, so long as such release of information is consistent with Florida Statutes governing public records.

IN WITNESS WHEREOF, the parties have signed this Agreement the date first written above.

THE CITY OF LEESBURG, FLORIDA

By: _____
Mayor / Commissioner

Attest: _____
City Clerk

APPROVED AS TO FORM:

Date: _____
City Attorney

PLEXUS RESEARCH, a Division of R. W. Beck, Inc.



By _____
A. Daryl Pullin
Its National Director
Management Advisory Services