

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement ("Agreement") is entered into, to be effective as of _____ ("Effective Date"), by and between _____ ("Vendor"), with its principal place of business located at _____, and **Lea County Electric Cooperative Inc.** ("Company"), with its principal place of business located at **[1300 West Ave D, Lovington, NM 88260]**. Each of Vendor and Company is a "Party", and together they are the "Parties".

TERMS AND CONDITIONS

In consideration of the mutual covenants set forth below, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agrees as follows:

1. **Purpose.** For the purpose of evaluating, discussing, negotiating or performing a possible business relationship, project, procurement, service, transaction or opportunity between the Parties (the "Purpose"), each Party may receive confidential information from the other Party.
2. **Meaning of Confidential Information.** For the purposes of this Agreement, the term "Confidential Information" shall mean all information and documentation, in whatever form, tangible or intangible, pertaining to the business of the disclosing Party, including but not limited to trade secrets, patents, copyright, data documents, business records, technical information and proprietary information of a disclosing Party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such Party or (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by such Party and marked "confidential" or with words of similar meaning, or is substantially similar to information contained in material marked "Confidential" and produced contemporaneously by the disclosing Party. Confidential Information also includes the existence of this Agreement and the fact or nature of the discussion or negotiations between the Parties.
3. **Exclusions of Confidential Information.** The term "Confidential Information" does not include any information or documentation that was: (a) already in the possession or control of the receiving Party without an obligation of confidentiality, prior to the Effective Date of this Agreement; (b) developed independently by the receiving Party as demonstrated by the receiving Party, without violating the disclosing Party's proprietary rights; (c) obtained from a source other than the disclosing Party without an obligation of confidentiality; or (d) publicly available when received, or thereafter became publicly available (other than through an unauthorized disclosure or wrongful act by, through, or on behalf of, the receiving Party or another third party).
4. **Compelled Disclosures.** A disclosure of Confidential Information required under legal process shall not be considered to be a breach of confidentiality by the receiving Party or a waiver of such obligation by the disclosing Party. Before any such disclosure, however, and as soon as reasonably practical, the receiving Party shall, unless prohibited by applicable law, provide prompt written notice to the disclosing Party to enable such Party to seek a protective order or prevent disclosure. If such protective order or other remedy is not obtained, the receiving Party agrees that it will disclose only that portion of the Confidential Information which it is advised by counsel is legally required to be disclosed, and will reasonably cooperate with the disclosing Party's efforts to obtain reliable assurance that confidential treatment will be accorded to such Confidential Information. The receiving Party will continue to treat any Confidential Information disclosed pursuant to this section as confidential. Notwithstanding anything herein to the contrary, neither Party guarantees that Confidential Information will be exempt from disclosure if required by applicable law, regulation, subpoena, audit, governmental oversight, public records request or other legal process, including requirements associated with federal or state funding, cooperative agreements or regulatory compliance.
5. **Use of Confidential Information.** Receiving party shall not, without the prior written consent of disclosing Party, reproduce, sell, transfer, or otherwise dispose of, or give or disclose any of the Confidential Information in whole or in part to any third party (except as otherwise provided in this Section 5 or Section 4 of this Mutual Non-Disclosure Agreement

Agreement). Receiving Party may use Confidential Information of disclosing Party only for the Purpose and shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own proprietary information of like importance, but in any case, using no less than a reasonable degree of care. Receiving Party shall not use Confidential Information for any commercial purpose other than the Purpose defined herein. Receiving Party may disclose Confidential Information received hereunder to its directors, employees, and consultants, and its affiliates' directors, employees, and consultants (collectively, "Representatives"), who, in all such cases, have a need to know for the Purpose, and who are bound to protect the received Confidential Information from unauthorized use and disclosure. Receiving party shall be responsible for any breach of this Agreement by any of its Representatives.

Receiving Party shall implement commercially reasonable administrative, technical, and physical safeguards to protect Confidential Information from unauthorized access, disclosure, alteration, misuse, or destruction including cybersecurity measures appropriate to the sensitivity of the information disclosed.

6. **Ownership of Confidential Information.** Unless otherwise agreed to by the Parties in writing, the Confidential Information of the disclosing Party and any copies thereof whether created by the disclosing Party or the receiving Party shall remain the property of the disclosing Party. The disclosing Party's disclosure of Confidential Information will not constitute an express or implied grant to the receiving Party of any rights to or under the disclosing Party's patents, copyrights, trade secrets, trademarks, or other intellectual property rights.
7. **Disclaimer & Acknowledgement.** CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". Each Party acknowledges that the disclosing Party has not made any representation or warranty as to the accuracy, completeness, or performance of its Confidential Information and each agrees, unless otherwise agreed in writing, that the disclosing Party shall have no liability resulting from the use of the Confidential Information. Disclosing Party shall not have any liability or responsibility for errors or omissions in, or any business decision made by the receiving Party in reliance on, any Confidential Information disclosed under this Agreement.
8. **Prevention & Notice of Unauthorized Use.** Each Party shall use its commercially reasonable efforts to assist the other Party in identifying and preventing any unauthorized use or disclosure of any Confidential Information exchanged pursuant to this Agreement. Without limitation of the foregoing, each Party shall advise the other Party immediately in the event that either Party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each Party will cooperate with the other Party in seeking an injunction or other equitable relief against such person. Each Party acknowledges that the breach of its obligations of confidentiality may give rise to irreparable injury to the other Party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, each Party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available.
9. **Federally Allowed and Required Disclosures.** This Agreement does not prohibit the Parties or the Parties' employees from reporting fraud, waste, or abuse to a designated investigative or law enforcement representative of a federal or state department or agency authorized to receive that information as a result of Federal funding. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employees' obligations, rights, or liabilities created by applicable law, statute, regulation, or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this Agreement and are controlling.
10. **Term and Termination.** This Agreement shall become effective as of the Effective Date and shall automatically expire five (5) years thereafter; provided, however, either Party may terminate this Agreement upon 30 days prior written notice to the other Party. The obligations contained herein with respect to the Mutual Non-Disclosure Agreement

Confidential Information shall survive for five (5) years following termination or expiration of this Agreement; provided, however, obligations relating to trade secrets, utility infrastructure information, network topology, operational technology, and cybersecurity-sensitive information shall survive for so long as such information remains non-public.

11. **Return of Confidential Information.** Upon termination of this Agreement or written request by the disclosing Party, the receiving Party will: (a) cease using the Confidential Information; (b) return or destroy the Confidential Information and all copies, notes, extracts, electronic files, storage media, drawings, maps or related materials thereof to disclosing Party within five (5) business days; and (c) confirm in writing that receiving Party has complied with these obligations; provided, however, that receiving Party may retain copies of any Confidential Information (including Confidential Information stored on electronic, magnetic or similar media) in accordance with policies and procedures implemented in order to comply with legal and regulatory recordkeeping requirements. Receiving Party will keep such retained copies confidential, in perpetuity, as provided herein and will use them solely for the purpose of recordkeeping compliance. No licenses or rights under any patent, copyright, or trademark are granted or are to be implied by this Agreement.
12. **Export.** Receiving Party agrees not to export any Confidential Information or any direct product thereof, except in compliance with all applicable export laws and regulations.
13. **Reporting Violations of Law or Regulations.** To the extent that trade secret information is shared amongst Parties, nothing in this Agreement prohibits a receiving Party from disclosing trade secret information when necessary to report a violation of law or regulation to a government official or an attorney, provided such disclosure is consistent with 18 U.S.C. § 1833. For avoidance of doubt, so long as receiving Party or its employees comply with 18 U.S.C. § 1833, when making disclosures under this section, such disclosures may be done without fear of prosecution or liability.
14. **Miscellaneous.**
 - 14.1 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico and the federal laws of the United States of America. The Parties hereby consent and submit to the jurisdiction and forum of the state and federal courts in the State of New Mexico in all questions and controversies arising out of this Agreement.
 - 14.2 **Publicity.** Neither Party will make, or authorize a third party to make, any public announcement or other disclosures related to this Agreement and any potential agreement or relationship with the other Party, without the prior approval of the other Party. Furthermore, neither Party shall use any trade name, trademark, logo, or any other propriety rights of the other Party in any manner without prior written consent.
 - 14.3 **No Waiver.** The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall in no way affect that Party's right to enforce such provisions, nor shall the waiver by either Party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision. An effective waiver under this Agreement must be in writing signed by the Party waiving its right.
 - 14.4 **Notices.** Any notice given pursuant to this Agreement shall be in writing and shall be given by personal service or by United States certified mail, return receipt requested, postage prepaid to the addresses appearing at the end of this Agreement, or as changed through written notice to the other Party. Notice given by personal service shall be deemed effective on the date it is delivered to the addressee, and notice mailed shall be deemed effective on the third day following its placement in the mail.
 - 14.5 **Assignment of Agreement.** This Agreement and the obligations of the Parties hereunder are personal to the Parties. Neither Party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party and any attempted assignment, subcontract, delegation, or transfer in violation of this Agreement, whether such assignment is

effected in connection with a sale of a Party's assets or stock or through merger, an insolvency proceeding or otherwise, without the prior written consent of the other Party, will be null and void. The terms of this Agreement will be binding upon assignees.

- 14.6 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any and all previous representations, understandings, discussions, or agreements between the Parties as to the subject matter of this Agreement. Should any provisions of this Agreement be found unenforceable, the remainder shall still be in effect. Further, all terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect. This Agreement may only be amended by an instrument in writing signed by the Parties. This Agreement does not create any agency or partnership relationship. Each of the Parties acknowledges that it has had the opportunity to review this Agreement with its legal counsel. Each Party represents that entering into this Agreement does not violate any other agreement or obligation binding upon such Party.
- 14.7 **Cumulative Remedies.** All rights and remedies of a Party herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance for the enforcement of this Agreement, and temporary and permanent injunctive relief.
- 14.8 **Counterparts & Electronic Signature.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The Parties agree that an electronic signature shall have the same force and effect as an original signature.

Executed on the dates set forth below by the undersigned authorized representatives of the Parties to be effective as of the Effective Date.

_____ ("Vendor")	Lea County Electric Cooperative Inc. ("Company")
By: _____	By: _____
Name: _____	Name: Robert Ferris
Title: _____	Title: CEO & Executive General Manager
Date: _____	Date: _____
Address for Notice:	Address for Notice:
	1300 West Ave D
	Lovington, NM 88260