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**MEMORANDUM**  
**INFORMATION TECHNOLOGY DEPARTMENT**

**TO:** Thomas Thomas, City Manager

**Number:** CY16-001

**SUBJECT:** AT&T Non-Disclosure Agreement

**Date:** 12/29/15

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The wireless communications signals in the new Police station are in need of a booster for both public safety radios and cellular. The Police Department has contracted with RACOM to install the booster in the new station. To activate the booster, RACOM, the City, and AT&T will need to put a non-disclosure agreement in place to protect all parties. The agreement is attached for review.

**Recommendation:**

The Information Technology Department recommends that the City Council authorize the City Manager to sign the non-disclosure agreement between the City of Rock Island, RACOM, and AT&T.

**Submitted by:** Timothy Bain, IT Director

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**APPROVED:** Thomas Thomas, City Manager

## NON-DISCLOSURE AGREEMENT

**THIS AGREEMENT**, effective on the date when signed by the last Party (“Effective Date”), is between AT&T Services, Inc., on behalf of itself and its Affiliates (collectively “AT&T”), and **City of Rock Island**, a government entity, (“Supplier”), and **RACOM**, an **Iowa** corporation, (“Supplier Third Party”). Each Party may be referred to in the singular as a “Party” or in the plural as the “Parties” to this Agreement. For purposes of this Agreement, the Party disclosing confidential information hereunder is hereinafter referred to as the “Disclosing Party” and the Party receiving confidential information hereunder is hereinafter referred to as the “Receiving Party.”

The Parties agree as follows:

1. In connection with ongoing discussions or negotiations for the purpose of sharing AT&T radio access network (RAN) specifications for the design and operation of an industrial booster in an AT&T network between AT&T, Supplier and Supplier Third Party (the “Project”), a Party may find it beneficial to disclose to one or both of the other Parties certain information, including confidential, proprietary or trade secret information. “Information”, with respect to a Party, means all confidential, proprietary or trade secret information including discoveries, ideas, concepts, know-how, techniques, processes, procedures, designs, specifications, strategic information, proposals, requests for proposals, proposed products, drawings, blueprints, tracings, diagrams, models, samples, flow charts, data, computer programs, marketing plans, Customer Information (as defined in Section 4 below), and other technical, financial or business information, whether disclosed in writing, orally, or visually, in tangible or intangible form, including in electronic mail or by other electronic communications. Information of a Disclosing Party shall be deemed to be confidential or proprietary only if it is clearly marked or otherwise identified by the Disclosing Party as being confidential or proprietary, provided that if it is orally or visually disclosed (including Information conveyed to an answering machine, voice mail box or similar medium), the Disclosing Party shall designate it as confidential or proprietary at the time of such disclosure. Notwithstanding the foregoing, a Disclosing Party shall not have any such obligation to so mark or identify, or to so designate, Information that the Disclosing Party discloses to, or is otherwise obtained by, the Receiving Party’s employees, contractors, or representatives (x) who are located on the Disclosing Party’s premises or (y) who access the Disclosing Party’s systems; any such Information so disclosed shall automatically be deemed to be confidential and proprietary. Additionally, the failure to mark or designate information as being confidential or proprietary will not waive the confidentiality where it is reasonably obvious, under the circumstances surrounding disclosure, that the Information is confidential or proprietary; any such Information so disclosed or obtained shall automatically be deemed to be confidential and proprietary. For greater certainty, Information provided by a Party to another Party prior to the Effective Date of this Agreement in connection with the Project shall also be subject to the terms of this Agreement. No Party shall disclose Information under this Agreement that includes, in any form, any of the following: customer or employee

### **Proprietary and Confidential**

This Agreement and information contained therein is not for use or disclosure outside of (i) AT&T, its Affiliates, and their third party representatives; (ii) Supplier; and (iii) Supplier Third Party”), except under written agreement by the contracting Parties.

personal information, credit card and credit related information, health or financial information, and/or authentication credentials.

2. Each Party understands that, except as otherwise agreed in writing, the Information which it may receive concerning either of the other Parties' future plans with respect to the Project is tentative and is not intended to represent firm decisions by any Party concerning the implementation of such plans. Information provided to any of the Parties hereunder does not represent a commitment by any other Party to purchase or otherwise acquire any products or services from any of the other Parties or to enter into any transaction or business relationship, or to induce the other Parties to spend funds or utilize resources. If a Party desires to purchase or otherwise acquire any products or services from another Party, those Parties will execute a separate written Agreement to govern such transactions. No development, enhancements, or modifications shall be requested, performed or paid for under this Agreement. Any development, enhancement and modification activities shall be negotiated and performed under a separate written agreement between such Parties.
3. The Receiving Party shall:
  - a. hold such Information in confidence with the same degree of care with which the Receiving Party protects its own confidential or proprietary Information, but no less than reasonably prudent care;
  - b. restrict disclosure of the Information solely to the other Parties and to its employees, contractors and agents with a need to know such Information, advise those persons of their obligations hereunder with respect to such Information, and assure that such persons are bound by obligations of confidentiality no less stringent than those imposed in this Agreement;
  - c. use the Information only as needed for the purposes of the Project;
  - d. except for the purposes of the Project, not copy, distribute, or otherwise use such Information or knowingly allow anyone else to copy, distribute, or otherwise use such Information; and ensure that any and all copies shall bear the same notices or legends, if any, as the originals;
  - e. upon the Disclosing Party's request, promptly return or destroy all or any requested portion of the Information, including, but, not limited to, tangible and electronic copies, notes, summaries, extracts, mail or other communications, and provide written certification within fifteen (15) business days to the Disclosing Party that all such Information has been returned or destroyed; and
  - f. not identify the Disclosing Party, AT&T's Affiliates or any other owner of Information in any advertising, sales material, press release, public disclosure or publicity without prior written authorization of the Disclosing Party.
4. "Customer Information" with respect to AT&T includes, but is not limited to, customer name, address, phone number, information concerning a customer's calling patterns, unlisted

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customer numbers, any other information associated with a customer or with persons in the household of a customer, and any information available to AT&T and/or its suppliers by virtue of AT&T's relationship with its customers as a provider of telecommunications, Internet, information or other services, including, but not limited to, the quantity, technical configuration, location, type, destination, amount of use of telecommunications or other services subscribed to, and information contained on the telephone bills of AT&T's customers pertaining to telephone exchange service, telephone toll service or other services received by a customer of AT&T. In the event that any Party receives Customer Information or any other Information that AT&T designates as requiring special protection under this Agreement, such Party agrees to comply with the following provisions with respect to such Information or Customer Information:

- a. for such AT&T Information in paper form:
    - 1) keep it in the direct supervision of the Party's authorized personnel or physically secured (e.g., in a locked desk or file cabinet, or other securable storage) at all times;
    - 2) when traveling, not check baggage containing this Information or put this Information in a public holding facility/baggage storage;
    - 3) not view or keep such Information in areas where it can be read by unauthorized persons;
    - 4) ensure that any and all copies shall bear the same proprietary marking notices or legends as the originals; and
    - 5) when returning or destroying such Information, in addition to the requirements of Section 3.e., use cross shredding for Information to be destroyed, as specified by AT&T.
  
  - b. for such AT&T Information in electronic form:
    - 1) keep it in the direct supervision of the Party's authorized personnel or secured (e.g., by requiring the use of a log-in password to access the Information and keeping the hardware stored in a locked office, desk or filing cabinet) at all times;
    - 2) when traveling, not check baggage containing devices with this Information or put devices containing this Information in a public holding facility/baggage storage;
    - 3) not view Information where it can be read or accessed by unauthorized persons;
    - 4) when transmitting such Information, encrypt it, where practicable, using the strongest commercially available encryption, but no less than 128-bit; and
    - 5) when it is no longer needed, in addition to the requirements of Section 3.e., either destroy it by rendering it irretrievable or securely store it using a method approved by AT&T.
  
  - c. notify AT&T immediately if any Information is lost, stolen, or otherwise disclosed to any person not authorized to have access to such Information under this Agreement.
5. Except for Customer Information, the Receiving Party shall have no obligation to preserve the confidential or proprietary nature of any Information which:

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- a. at the time of disclosure was already known to the Receiving Party free of any obligation to keep it confidential (as evidenced by the Receiving Party's written records prepared prior to such disclosure);
  - b. is or becomes publicly known through no wrongful act of the Receiving Party (such obligations easing at the time such Information becomes publicly known);
  - c. is lawfully received from a third party, free of any obligation to keep it confidential;
  - d. is independently developed by the Receiving Party or a third party as evidenced by the Receiving Party's written records, without any direct or indirect use or access to the Information received from the Disclosing Party; or
  - e. the Disclosing Party consents in writing to be free of restriction.
6. If the Receiving Party is required to provide Information of a Disclosing Party to any court or government agency pursuant to a written court order, subpoena, regulatory demand or process of law, the Receiving Party must, if legally permitted, first provide the Disclosing Party with prompt written notice of such requirement and reasonable cooperation to the Disclosing Party should it seek protective arrangements for the production of such Information. The Receiving Party will (i) take reasonable steps to limit any such provision of Information to the specific Information required by such court or agency, and (ii) continue to otherwise protect all Information disclosed in response to such order, subpoena, regulation or process of law. Except for such required disclosure, the Information shall remain subject to the terms of this Agreement and may only be disclosed as set forth in Section 3 or Section 5 hereof.
  7. The term of this Agreement is three (3) years from the Effective Date. Thereafter, the Receiving Party's obligations with respect to any particular Information of the Disclosing Party shall remain in effect, including after the expiration or termination of this Agreement, until such time as it qualifies under one of the exceptions set forth in Section 5 above. Notwithstanding anything to the contrary herein, Customer Information shall remain confidential indefinitely and shall never be disclosed or used without the prior written approval of an authorized representative of AT&T.
  8. Information remains at all times the property of the Disclosing Party, which shall retain exclusive rights to such Information. Nothing contained in this Agreement shall be construed as granting or conferring to the Receiving Party any patent, copyright, trademark, trade secret or other proprietary rights by license or otherwise in any Information, except for the sole right to use such Information in relation to the Project and in accordance with this Agreement.
  9. This Agreement shall be binding upon the Parties hereto and their respective Affiliates, successors and assigns. For the purposes of this Agreement, the term "Affiliate" means, with respect to a Party, (1) a company, whether incorporated or not, which owns, directly or indirectly, a majority interest in such Party (a "parent company"), and (2) a company, whether incorporated or not, in which a thirty percent (30%) or greater interest is owned, either directly or indirectly, by (i) such Party or (ii) a parent company.

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10. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, EACH DISCLOSING PARTY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER WITH RESPECT TO ANY INFORMATION FURNISHED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
11. The Receiving Party acknowledges and agrees that any disclosure, dissemination, or release of any Information received from the Disclosing Party, except as provided in Section 3, Section 5 or Section 6, shall be deemed a material breach of this Agreement. In the event of such breach, the Disclosing Party may demand prompt return of all Information previously provided to the Receiving Party and terminate this Agreement. The provisions of this Section are in addition to any other legal rights or remedies the Disclosing Party may have at law or in equity.
12. This Agreement may only be changed or supplemented by a written amendment signed by authorized representatives of the Parties to this Agreement. No forbearance, failure or delay by a Party in exercising any right, power or privilege is a waiver thereof, nor does any single or partial exercise thereof preclude any other or future exercise thereof, or the exercise of any other right, power or privilege.
13. If and to the extent any provision of this Agreement is held invalid or unenforceable at law, such provision will be deemed stricken from the Agreement and the remainder of the Agreement will continue in effect and be valid and enforceable to the fullest extent permitted by law.
14. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, irrespective of its choice of law principles. Each Party agrees to comply with all laws. Without limiting the foregoing, the Receiving Party shall not use, transfer, transmit, export, directly or indirectly, any product or any Information of the Disclosing Party except in compliance with the export control laws and regulations of the United States or the laws of any other country governing the aforesaid activities. In the event the Receiving Party violates the foregoing, the Receiving Party shall defend, indemnify and hold harmless the Disclosing Party from and against any claim, loss, liability, expense or damage including fines or legal fees, incurred by the Disclosing Party with respect to the export activities contrary to the foregoing. Notwithstanding any other provision of this Agreement or any Supplement attached hereto, this Section shall survive any termination or expiration of this Agreement.
15. Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., .pdf or similar format) are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as that of an original signature. This Agreement may be executed in multiple counterparts, each of which shall be deemed to constitute an original but all of which together shall constitute only one document.

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**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the Effective Date.

AT&T Services, Inc.,  
a Delaware corporation

City of Rock Island,  
a government\_entity

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name:

Printed Name:

Title:

Title:

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

RACOM,  
an Iowa corporation

By: \_\_\_\_\_

Print Name:

Title:

Date Signed: \_\_\_\_\_

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