

## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement”) is made and entered into as of the 26th day of September 2022, (“Effective Date”) by and between Colorado Springs Utilities (“Utilities”), an enterprise of the City of Colorado Springs, a Colorado home rule city and municipal corporation, located at 121 S. Tejon Street, Colorado Springs, Colorado, 80903, and Pueblo a municipal corporation by and on behalf of the Pueblo Fire Department (“Stakeholder”), with principal place of business of Pueblo Fire Department at 1551 Bonforte Blvd, Pueblo, CO 81001. Utilities and Stakeholder may be individually referred to as a “Party” and collectively referred to as the “Parties” under this Agreement.

WHEREAS, Utilities agrees and Stakeholder recognizes that there is a need to disclose certain confidential or proprietary information of Utilities in connection with all Business Continuity Plans; Emergency Action, Emergency Response, and Business Recovery (collectively the “Plans”) as may be updated or amended from time to time;

WHEREAS, although Stakeholder is subject to Federal law the Stakeholder shall also comply with the additional safeguards of this Agreement; and

WHEREAS, Utilities and Stakeholder recognize the need to preserve the confidentiality of information relating to the specialized details of the Plan(s).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Stakeholder and Utilities agree as follows:

**1. Confidential Information.** Stakeholder hereby acknowledges that it has been or may be exposed to confidential or proprietary information (“Confidential Information”), regardless of form (oral or written), disclosed by Utilities to Stakeholder in connection with the Plan(s), including, but not limited to critical infrastructure information, personal contact information, and plan response. Digital copies and/or GIS data for dam inundation maps located in El Paso County, and all information included in the Plan(s) is confidential and proprietary and shall be deemed Confidential Information.

**2. Covenant Not To Disclose.** Stakeholder hereby agrees that it shall not use, commercialize, or disclose Confidential Information to any person or entity, except to its own employees solely on a “need to know” basis and provided that Stakeholder takes appropriate steps to cause each employee to whom Confidential Information is disclosed to preserve the confidentiality of the Confidential Information and to be bound by the restrictions imposed by this Agreement. Stakeholder shall use at least the same degree of care in safeguarding Confidential Information as it uses in safeguarding its own confidential information, but in no event less than reasonable care. Nothing in this Agreement is intended to or shall grant to Stakeholder an ownership right, a license, or other right of any nature to use Confidential Information except as expressly provided in this Section 2.

- 3. Exceptions to Obligations.** Notwithstanding the foregoing, this Agreement shall not apply to information which:
- (a) is already known to Stakeholder, provided that such prior knowledge can be substantiated by written records and documents and was not disclosed by Utilities to Stakeholder pursuant to a Confidentiality Agreement similar to this Agreement;
  - (b) has become publicly known through no act of Stakeholder;
  - (c) has been rightfully received from a third party who had a bona fide right to make such disclosure;
  - (d) has been independently developed by Stakeholder without reliance on the Confidential Information;
  - (e) has been approved for release by written authorization of Utilities; or
  - (f) is required to be disclosed by a court, a governmental agency, or by law, specifically the Colorado Open Records Act (“CORA”), § 24-72-200.1, C.R.S. et seq. As municipal corporations, it is understood and acknowledged that the Parties are subject to CORA. In the event that the a Party receives a request for Confidential Information (the “Receiving Party”), the Receiving Party will provide written notice thereof to the other Party (the “Non-Receiving Party”) so that the Receiving Party may seek a protective order or other appropriate remedy. The Non-Receiving Party shall cooperate with the Receiving Party’s efforts to obtain such relief, and the Parties shall equally bear the costs of seeking the protective order or other appropriate remedy unless the Parties mutually agree in writing otherwise..

The burden of proving the applicability of one of the above exceptions shall be on Stakeholder. Stakeholder will provide Utilities with prompt written notice at address set forth above of any request by legal authorities or relating to legal or similar process (e.g., interrogatories or subpoenas) to disclose any Confidential Information so Utilities may, in its sole discretion, seek to obtain an appropriate protective order or waive compliance with this Agreement.

**4. Unauthorized Disclosure.** In the event of any unauthorized disclosure, use, or other misappropriation of any Confidential Information by Stakeholder (including its officers, directors, employees, and agents), Stakeholder shall promptly notify Utilities in writing at the address set forth above and shall take all actions reasonably required or advisable to recover, or prevent the unauthorized use or disclosure of, such Confidential Information.

**5. Injunctive Relief; Remedies.** Stakeholder agrees that any violation of the terms of this Agreement would cause immediate and irreparable harm to Utilities, and Stakeholder therefore agrees that upon the existence of any breach or threatened breach of this Agreement, Utilities may immediately obtain a temporary restraining order or other form of equitable relief from an appropriate court of competent jurisdiction. Stakeholder agrees not to contest the granting of such temporary restraining order or other equitable relief. Such order shall become permanent upon adequate showing of irreparable injury and ruling by a court of law. Stakeholder may participate in any proceeding relating to a permanent injunction. This provision shall not limit the right of Utilities to other damages and legal relief in addition to or substitution for such equitable relief.

**6. Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the law of the State of Colorado, without regard for the law of conflicts, and Federal law. In the event of litigation, this Agreement shall be enforceable by or against the City of Colorado Springs on behalf of Utilities as provided in the Colorado Springs City Code §12.1.109. Any dispute regarding this Agreement may only be brought in the El Paso County District Court, Colorado Springs, Colorado, or for matters of exclusive federal jurisdiction United States District Court for the District of Colorado.

**7. Term.** This Agreement shall remain in effect during all discussions and exercises related to the Plan(s) between Utilities and Stakeholder and shall not terminate for ten (10) years from the disclosure of the last item of Confidential Information subject to this Agreement.

**8. Return or Destruction of Information.** Upon receipt of an updated version of any Plan(s) Stakeholder agrees to destroy superseded Plan(s), or Stakeholder agrees to return or destroy all Confidential Information of Utilities together with any notes, documents, copies, or other materials prepared by Stakeholder with respect to such Confidential Information within ten (10) days following the receipt of the updated version of the Plan(s) or a specific request from Utilities. Stakeholder shall provide written certification of such return or destruction to Utilities in writing at the address set forth above.

**9. Disclaimer.** Utilities does not warrant the accuracy of the information contained in any plans or maps related to the Plan(s).

**10. Entire Agreement.** This Agreement constitutes the entire agreement between the parties. Utilities and Stakeholder acknowledge and agree that no other statement, representations, agreements or warranties, except those outlined herein, apply to the terms and conditions of this Agreement. The terms of this Agreement may only be modified by a written amendment executed by both parties. Email and all other electronic (including voice) communications from Utilities in connection with this Agreement are for informational purposes only. No such communication is intended by Utilities to constitute either an electronic amendment or an electronic signature, or to constitute any agreement by Utilities to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

**11. Assignment.** This Agreement may not be assigned or delegated by Stakeholder without the prior written approval of Utilities. The rights and obligations of each of the parties will inure to the benefit of, will be binding upon, and will be enforceable by the parties and their lawful permitted successors, assigns, and representatives.

**12. Non-Waiver/Severability.** A waiver of any right under this Agreement by a party on any occasion shall not in any way constitute a waiver of such right or any other right on any other occasion. In the event any provision of this Agreement is determined to be invalid, such invalidity shall not affect the validity of the remaining portions of this Agreement, and the parties shall substitute for the invalid provision a provision which most closely approximates the intent and economic effect of the invalid provision.

In witness whereof, the parties have executed this Agreement as of the date first written above and the execution of this Agreement by representative of Stakeholder further certifies that the representative is duly authorized to commit Stakeholder to this Agreement in its entirety:

**COLORADO SPRINGS UTILITIES**

**STAKEHOLDER**

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

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

Name: Bryan Babcock

Name: Nicholas Gradisar

Title: General Manager, Colorado Springs Utilities

Title: Mayor

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

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