

NON-DISCLOSURE TERMS AND CONDITIONS

1. The Board is the owner of certain confidential and/or security-sensitive information relating to its water system and components thereof ("Confidential Information"), which the Board represents is not subject to public inspection under C.R.S. § 24-72-201 *et. seq.*, and which the Board has taken and continues to take steps to protect as confidential and restricted.
2. The parties recognize that it may be necessary to exchange information, including but not limited to Confidential Information, between the Board and Consultant, for the sole and exclusive purpose of the Work to be performed under their **Insert Contract or Agreement or Task Order Agreement** **Insert main agreement's contract number** ("Agreement"). These Non-Disclosure Terms and Conditions are incorporated into the Agreement. Consultant acknowledges that it may exchange Confidential Information with a contractor working on behalf of the Board and that these Non-Disclosure Terms and Conditions also will apply to such Confidential Information.
3. The Confidential Information includes any drawings, studies, photographs and other information regarding **[DESCRIPTION OF CONFIDENTIAL INFORMATION-to what does the information being provided relate?]** provided by either Party. Confidential Information also includes any other information provided by either Party that is labeled or identified as confidential.
4. The Board, in its sole discretion, may provide to Consultant the Confidential Information in the form of the Board's choosing.
5. If the Board provides or Consultant requests the Confidential Information in a format requiring particular software, it is understood that Consultant will secure at its sole cost any and all necessary software licenses, authorizations or other intellectual property rights for the transfer and use of the Confidential Information.
6. As part of these Non-Disclosure Terms and Conditions, the Board may permit Consultant to visit one or more Board facilities according to a schedule to be determined by the Board. Consultant is prohibited from taking any pictures or video or making any electronic recordings of any kind during its visit(s) to the Board's facilities without the prior approval of the Board's site or area supervisor. Consultant acknowledges that it may learn information about and receive documentation about the Board's facilities during the visit(s), and Consultant agrees that such information and documentation will be considered Confidential Information under these Non-Disclosure Terms and Conditions.
7. The Consultant is prohibited from making any copies, scans, or duplicates of the Confidential Information provided by the Board, and from taking any pictures, video, or making any electronic recordings of any kind during any meetings or presentations with the Board where Confidential Information is discussed, without prior approval of the Board's representative, confirmed in writing. The Consultant is prohibited from sharing any Confidential Information with third parties, except as provided in Section 17 of this Agreement, without prior approval of the Board, confirmed in writing.
8. Consultant shall hold and use the Confidential Information only in furtherance of the Approved Use as described herein. Consultant shall limit disclosure of the Confidential Information to only its employees and subcontractors who have a need to know the Confidential Information. Consultant will not use or derive any direct or indirect benefit from any information provided by the Board, or from any part thereof, without the prior written consent of the Board; this prohibition will survive the termination of these Non-Disclosure Terms and Conditions. Consultant shall take

reasonable steps to ensure that anyone to whom it provides the Confidential Information complies with these Non-Disclosure Terms and Conditions.

9. Each employee or subcontractor of Consultant identified as having a need to know the Confidential Information provided by the Board shall be required to execute an original of these Non-Disclosure Terms and Conditions and will be bound to uphold them to the extent applicable to the particular employee or subcontractor. Each employee or subcontractor executing these Non-Disclosure Terms and Conditions agrees not to use or derive any direct or indirect benefit from any information provided by the Board, or from any part thereof, without the prior written consent of the Board; this prohibition will survive the termination of these Non-Disclosure Terms and Conditions. Prior to distribution of the Confidential Information, Consultant shall provide to the Board copies of all Non-Disclosure Terms and Conditions executed by Consultant's employees and subcontractors, as well as a master list of the subcontractors, their respective functions, the reason for their need to know the Confidential Information, and a summary list of the Confidential Information to be provided to them.
10. Consultant shall not be liable to the Board for disclosure of any information, including but not limited to Confidential Information, if the information:
 - a. Was in the public domain at the time it was disclosed, or
 - b. Becomes part of the public domain without breach of these Non-Disclosure Terms and Conditions, or
 - c. Is obtained by Consultant from a third party that is lawfully in possession of such information and is not in violation of any contractual or legal obligation to the Board or other third party with respect to such information, or
 - d. Is disclosed with the prior written approval of the Board, or
 - e. Was independently developed by Consultant outside of the Agreement, or
 - f. Is disclosed pursuant to the provisions of a court order or subpoena, provided that the Board has had an opportunity to object or intervene in the matter.
11. These Non-Disclosure Terms and Conditions shall supersede the provisions of any inconsistent language that may be affixed to any information provided by the Board or by Consultant, and the inconsistent provisions of any such language shall be without any force or effect during the term of these Non-Disclosure Terms and Conditions.
12. Confidential Information and any other information or materials provided by the Board to Consultant in a physical format shall be returned to the Board, or to the Board's contractor that supplied the information, accompanied by a certification of deletion of any copies or extracts of Confidential Information, in whole or in part, possessed by Consultant in any electronic format (1) at such time as it is no longer required for the purposes of the Agreement or (2) upon request of the Board at any time. A form of the certification of deletion is attached to these Non-Disclosure Terms and Conditions as Appendix I.
13. Either Party may terminate this Agreement by giving fourteen (14) days' written notice. Upon termination, the Consultant shall immediately return all Confidential Information in a physical format to the Board, or to the Board's contractor that supplied the information, and provide a certification of deletion for Confidential Information as provided in Section 13 above.
14. If the Agreement has terminated or expired but Consultant remains in possession of any information that would have been protected under these Non-Disclosure Terms and Conditions, Consultant will treat that information or any part thereof, as well as any other information received from the Board under the Agreement, as if these Non-Disclosure Terms and Conditions remain in effect.

15. If Consultant loses or makes unauthorized disclosure of any of the Board's information protected by these Non-Disclosure Terms and Conditions, it shall notify the Board immediately and take all steps reasonable and necessary to retrieve the lost or improperly disclosed information.
16. The standard of care for protecting information exchanged under these Non-Disclosure Terms and Conditions will be at least that degree of care the Consultant uses to prevent disclosure, publication or dissemination of its own proprietary information, provided that degree of care is at least reasonable.
17. The Consultant shall not be liable for the inadvertent or accidental disclosure of such information if such disclosure occurs despite the exercise of at least the same degree of care as the Consultant normally takes to protect its own proprietary information, provided that degree of care is at least reasonable.
18. If either Party receives a request by a third-party, under the Colorado Open Records Act (C.R.S. § 24-72-201 et. seq.) or otherwise, to provide any information it has received pursuant to these Non-Disclosure Terms and Conditions or to the Agreement, it shall treat all such information as confidential or otherwise protected from disclosure, unless it is permitted to be disclosed under these Non-Disclosure Terms and Conditions. In the event of such a request, the Party that received the request shall notify the other Party in writing as soon as reasonably possible. The Board shall not be liable for disclosure of any information received from Consultant if such disclosure is required by the Colorado Open Records Act.
19. In providing any information to Consultant, the Board makes no warranty or representations, either express or implied, as to the information's adequacy, sufficiency, or freedom from defect of any kind, including freedom from any patent infringement that may result from the use of such information, nor shall the Board incur any liability or obligation whatsoever by reason of providing such information.
20. These Non-Disclosure Terms and Conditions contain the entire agreement relative to the protection of information to be exchanged between the Board and Consultant for purposes of the Agreement and supersedes all inconsistent prior or contemporaneous oral or written understandings and agreements regarding this issue. These Non-Disclosure Terms and Conditions shall not be modified or amended, except by an amendment to the Agreement executed by the Parties.
21. Nothing contained in these Non-Disclosure Terms and Conditions, by express grant, implication, estoppel or otherwise, shall create in Consultant any ownership, right, title, interest, or license in or to the documents, information, inventions, patents, technical data, computer software, or software documentation of the Board.
22. Notwithstanding that the Parties may exchange information for the purposes of the Agreement, neither Party waives any claim that the information it provides is privileged, proprietary, confidential, or some combination thereof.
23. Nothing contained in these Non-Disclosure Terms and Conditions shall grant to Consultant the right to make commitments of any kind for or on behalf of the Board without the prior written consent of the Board.
24. Nothing contained in these Non-Disclosure Terms and Conditions shall be construed as restricting the Board's right to restrain use or dissemination of the Board's information in accordance with applicable federal, state, or local law or regulation, or at common law.

Each employee and/or subcontractor of Consultant identified as having a need to receive the Confidential Information shall execute an original of these Non-Disclosure Terms and Conditions. Consultant shall provide the executed originals to the Board.

To be completed by an employee of Consultant:

I, _____, an employee of Consultant, agree to these Non-Disclosure Terms
(Print name legibly)
and Conditions.

Signature: _____ Date: _____

To be completed by a subcontractor of Consultant:

I, _____, a subcontractor of Consultant, agree to these Non-Disclosure
(Print name legibly)
Terms and Conditions.

Signature: _____ Date: _____

By execution, signer certifies that s/he is authorized to accept and bind the subcontractor of Consultant to these Non-Disclosure Terms and Conditions.

**Appendix I
Form of Certification of Deletion**

To be completed by an authorized representative of Consultant:

(Either (1) at such time as it is no longer required for the purposes of the Agreement or (2) upon request of the Board.)

I, [EMPLOYEE NAME], an employee of Consultant authorized to make such statements, hereby certify that on [DATE] [CONSULTANT NAME] deleted all copies or extracts of Confidential Information, in whole or in part, currently in its possession in any electronic format.

Signature: _____ Date: _____

By execution, signer certifies that s/he is authorized to make such certification on behalf of Consultant.

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public