

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Agreement (“Agreement”) is entered into on _____, 2017 by and between California Water Service Company (“Company”), a California corporation with its principal place of business at 1720 North First St., San Jose, CA 95112, and the City of Carson (“Recipient” or “City”), a general law city, with a principal place of business located at 701 East Carson Street, Carson, CA 90745.

RECITALS

Whereas, Company is a utility company, and has a network of pipelines located below ground throughout the City of Carson; and

Whereas, Company has agreed to provide Recipient with accurate GIS information regarding the location of their water pipelines throughout the City so as to allow the City to reduce construction complications and to avoid unnecessary pipe breakages and spills; and

Whereas, Company’s GIS information constitutes critical infrastructure information, pursuant to 6 U.S.C. § 131 and proposed 6 C.F.R. Part 29.2(b); and

Whereas, critical infrastructure information is exempt from disclosure under Sections 6254(ab) of the Government Code, and must be kept confidential.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS. The following definitions apply to this Agreement:

1.1. “Company” means California Water Service Company.

1.2. “Recipient” or “City” means the City of Carson.

1.3. “Confidential Information” means information, from any source, that is used in Company’s business and is one of the following:

- (a) not generally known to the public for security or other reasons;
- (b) designated by Company as confidential or secret or that should reasonably be assumed by Recipient to be confidential or secret;
- (c) gives Company a competitive advantage or the opportunity to obtain a competitive advantage; or
- (d) proprietary to the Company.

1.3.1. Confidential information does not include any information that:

- (a) is already lawfully in possession of Recipient (unless received pursuant to a nondisclosure agreement);
- (b) is or becomes generally available to the public through no fault of Recipient;
- (c) is disclosed to Recipient by a third party who may transfer or disclose such information without restriction;
- (d) is required to be disclosed by Recipient as a matter of law provided that Recipient will use all reasonable efforts to provide Company with prior notice of such disclosure and to obtain a protective order therefor;
- (e) is disclosed by Recipient with Company's approval; or
- (f) is independently developed by Recipient without any use of confidential information. In all cases, Recipient will use all reasonable efforts to give Company ten (10) days' prior written notice of any disclosure of confidential information.

1.3.2. Examples of confidential information include, without limitation:

- (a) Information relating to any of Company's plans, technical or engineering reports, Geographic Information System data, maps or markings showing the estimated location(s) of its facilities or other critical infrastructure information.
- (b) Information relating to any of Company's proprietary rights or information, including, but not limited to, technical, engineering, production data, reports, test data or results.

2. COVENANT TO MAINTAIN CONFIDENTIALITY. Recipient hereby covenants and agrees as follows:

2.1. **Nondisclosure.** Recipient shall take all reasonable precautions to prevent inadvertent disclosure of any Confidential Information.

2.2. **No Use, Copying, or Transfer.** Recipient shall take all reasonable precautions to prevent inadvertent use, copying, or transfer of Confidential Information.

2.3. **Review of Documents.** Company will have the opportunity to review any document at least twenty (20) days prior to public publication or distribution. If at Company's sole discretion any report portions, attachments, maps or references violates Company's confidentiality agreement or may be determined by Company to jeopardize the security of Company's water system, Company may object to such portions, attachments, maps or references and Recipient shall not include portions, attachments, maps or references in its public publication or distribution of the document.

2.4. These restrictions on disclosure of Confidential Information shall not apply to:

- (a) Information which the Recipient may be required to disclose by applicable law or regulation, provided that the Recipient shall give Company prompt written notice and sufficient opportunity to object to such use or disclosure, or to request confidential treatment of the Confidential Information; or
- (b) Information that was in the public domain at the time of this Agreement; or
- (c) Information that has entered the public domain through the Company or through any third party not being bound to secrecy by the Company; or
- (d) Information that the Recipient had in its possession prior to such disclosures by the Company, as evidenced by written records; or
- (e) Information that the Recipient has acquired from a third party bona fide source other than the Disclosing Party, which third party is not under an obligation with either the Recipient or Disclosing Party to maintain the confidentiality of such disclosed information; or
- (f) Information that is required to be disclosed pursuant to the California Public Records Act, other applicable law or other legal requirements, including but not limited to legal discovery, subpoenas, civil or criminal investigations, or court order, provided that the Recipient shall give the Disclosing Party prompt written notice and sufficient opportunity to object to such use or disclosure, or to request confidential treatment of the Confidential Information.

3. WARRANTIES. Recipient hereby agrees that the provision of any plans, markings, digital files or other information by Company is done solely as an accommodation and without any warranties, express or implied, representations or guarantees of completeness or accuracy.

4. RELEASE OF LIABILITY.

4.1. Release of Company. Recipient releases and discharges Company, its officers, directors, employees and authorized agents, from any and all losses, damage, including special damages, personal injuries or death, property damage, costs, expenses, claims and causes of action of any nature that in any manner arise from the use or dissemination of the information provided by Company under this Agreement.

4.2. Release of Recipient. Company releases and discharges Recipient, its officers, directors, employees and authorized agents, from any and all losses, damage, including special damages, personal injuries or death, property damage, costs, expenses, claims and causes of action of any nature that in any manner arise from the use or dissemination of the information provided by Recipient under this Agreement.

5. MUTUAL INDEMNIFICATION

Pursuant to Government Code Section 895.4 the parties, each a public entity, have agreed to mutually indemnify each other as provided for in this section. Each party to

this Agreement shall be solely liable for, and shall indemnify, defend and hold harmless the other parties and each of their officers, officials, employees, agents and volunteers (“Indemnitees”) from, any and all loss, liability, errors, obligations, fines, penalties, forfeitures, costs and damages to persons or property (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by any of the Indemnitees, the indemnifying party or any other person, and from any and all claims, suits, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the active negligence or intentional acts or omissions of the indemnifying party or any of its elected officials, officers, officials, employees, agents or volunteers arising from or in connection with the performance of this Agreement.

6. **REMEDIES.** It is hereby understood and agreed that, in the event of a breach by Recipient of any of the covenants contained in this Agreement, damages are an inadequate remedy. Any breach will cause Company irreparable injury and damage and Recipient therefore agrees that Company is entitled to seek injunctive and equitable relief in addition to all other remedies available to it by law, in the event of a breach or anticipated breach by Recipient of any of the terms of this Agreement.

7. GENERAL PROVISIONS.

7.1. **Assignment.** This Agreement may not be assigned by any party hereto, whether by operation of law or otherwise, without the prior written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall be binding on the Parties, their successors and assigns.

7.2. **Notices and Communications.** Any notice required by this Agreement or communications between the Parties regarding this Agreement shall be effected by personal delivery or registered or certified mail, postage pre-paid with return receipt requested as follows:

For Company: 1720 North First St., San Jose, CA 95112. Attn: _____
_____.

For Recipient: City of Carson, 701 E. Carson Street, Carson, CA 90745.
Attn: Director of Public Works.

Each Party may change its above-identified address by written notice to the other Party in accordance with this Section. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of five (5) days after mailing.

7.3. Entire Agreement. This Agreement embodies the final and complete understanding between the parties, and replaces and supersedes all previous oral or written agreements, understandings, or arrangements between the parties with respect to the subject matter contained in this Agreement. This Agreement may not be modified or amended except in writing signed by each contracting party.

7.4. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

7.5. Severability. In case any provision of this Agreement shall, for any reason, be held to be invalid, unenforceable, or illegal, such provision shall be severed from this Agreement, and such invalidity, unenforceability, or illegality shall not affect any other provisions of this Agreement.

7.6. Waiver. No waiver by Company of any breach by Recipient of any of the provisions of this Agreement shall be deemed a waiver of any preceding or subsequent breach. No waiver is effective unless written and then only to the extent set forth in the writing.

7.7. Attorney's Fees. In the event of any dispute arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

7.8. Effective Date. This Agreement is effective as of _____, 2017.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date
of _____ in City of Carson, County of Los Angeles, California.

CALIFORNIA WATER SERVICE COMPANY:

By: _____
Its:

CITY OF CARSON:

By: _____
Its:

APPROVED AS TO FORM:

Sunny K. Soltani, City Attorney
[EQG]