

**CONFIDENTIALITY
AND
NONDISCLOSURE AGREEMENT**

This CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (this "Agreement") is made as of _____, 2015 by and between UNITED WATER AND SANITATION DISTRICT, a water and sanitation district established under the laws of the State of Colorado ("United"), and the TOWN OF CASTLE ROCK, a home rule municipality of the County of Douglas, State of Colorado ("Town").

RECITALS:

A. United owns the Sedalia Diversion ("Diversion Facilities") and the Sedalia Reservoir No. 1 ("Storage Facilities"), which are existing structures constructed adjacent to Plum Creek in Douglas County, Colorado and are a part of the Plum Creek Diversion, Storage and Delivery System (the "Plum Creek Project").

B. The Town has expressed an interest in acquiring an ownership interest in the Diversion Facilities and the Storage Facilities and, in connection therewith, has requested from United certain documents and information that may be helpful with its review of and possible acquisition in the Plum Creek Project.

C. United is willing to furnish to the Town and its engineers, legal and other advisors (collectively, "Representatives"), certain documents and information, some of which is confidential or proprietary provided the Town agrees to maintain the confidentiality of the Confidential Information (as defined below) on and subject to the terms and conditions set forth in this Agreement.

IN CONSIDERATION of the foregoing Recitals, Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Confidential Information. As used in this Agreement, the term "Confidential Information" shall mean any and all information or data related to the Plum Creek Project furnished to the Town or any of its Representatives pursuant to this Agreement by or on behalf of the Plum Creek Project, whether disclosed orally, visually or in any electronic or tangible form. Confidential Information does not include information that (i) was legally available to the public prior to the time of its disclosure, (ii) becomes available to the public through no act or omission of the Town, or (iii) becomes available to the Town from a third party not reasonably expected by the Town to be under any obligation of confidentiality to United with respect thereto. In addition, the term "Confidential Information" shall be deemed to include any notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by the

Town or its Representatives that contain, reflect or are based upon, in whole or in part, or recollections or memorizations of, any Confidential Information furnished to the Town or its Representatives pursuant hereto. Any documentation or other information that is labeled or marked "Confidential" is presumptively agreed to be Confidential Information.

2. Use and Nondisclosure of Confidential Information. The Town and its Representatives shall use the Confidential Information only to allow the Town evaluate its possible acquisition of an interest in the Plum Creek Project (the "Acquisition"). The Confidential Information shall not be used or exploited for any other purpose without the prior written consent of United, which consent may be withheld for any reason, and the Town agrees that it would be unfair and unethical for it to use the Confidential Information for any other purpose. The Town and its Representatives shall hold in strict confidence, and shall not use or disclose any Confidential Information to any person or entity in any manner or for any other purpose. In the event any such disclosure is required pursuant to law, court order or governmental request including any request under the Colorado Open Records Act, the Town will provide United with reasonable written notice prior to any disclosure so that United may seek a protective order or other appropriate remedy, and the Town shall exercise reasonable efforts to assist United in obtaining such order or remedy. The Town shall disclose Confidential Information to its Representatives only on a need to know basis for the purpose specified herein. In any event, to the extent provided by law, the Town shall be responsible and liable for any breach of this Agreement by it or any of its Representatives, and agrees, at its sole expense, to use reasonable best efforts to safeguard the Confidential Information and restrain its Representatives from any prohibited or unauthorized disclosure or use of the Confidential Information.

3. Return of Confidential Information. If either party elects not to proceed with the Town's acquisition, the Town shall, upon United's request, return to United all documents, if any, furnished to the Town by or on behalf of United containing Confidential Information, and the Town shall destroy all copies, electronic or otherwise, of such material together with any notes, extracts and other materials prepared by the Town or the Town's Representatives containing or based upon any Confidential Information. In addition, upon the written request of United, the Town shall deliver a certificate certifying that it has complied with the provisions of this Section 3.

~~4. Accuracy and Completeness. Although United will endeavor to furnish information that it considers to be relevant for the purposes hereof, the information is being provided to the Town as an accommodation to the Town, and neither United nor its representatives makes any representations or warranties as to the accuracy or completeness of the Confidential Information. The Town agrees that neither United nor any of its representatives shall have any liability to the Town resulting from the Town's disclosure or use of the Confidential Information under this Agreement, regardless of whether permitted hereby.~~

5.4. No Waiver. No failure or delay by either Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial waiver thereof preclude any other or further exercise thereof or the exercise of any other right or remedy hereunder.

6.5. Remedies. Each party acknowledges and agrees that, because of the unique nature of this Agreement, the other party would suffer irreparable harm in the event of a breach by such party of any of its obligations under this Agreement, such that monetary damages would be inadequate to compensate the non-breaching party for such a breach. Each party agrees that under such circumstances the other party shall be entitled to injunctive relief, in addition to any other appropriate relief at law to which such party shall be entitled, and waives any requirement for the securing or posting of any bond in connection with such remedy.

7.6. Damages. In the event of an improper disclosure or use of Confidential Information by the Town or its Representative pursuant to paragraph 2, and to the extent provided by law, the Town shall indemnify and hold harmless United, its officers, directors, employees and shareholders, and their respective successors and assigns against any and all liability, costs, damages and expenses, including attorney's fees, incurred or sustained by such parties as may be caused or compounded by such improper disclosure or use of Confidential Information by the Town or its Representative and hereby agrees to assume and discharge such liabilities, costs, damages and expenses. If any suit or other action is commenced to construe or enforce any provision of this Agreement, the prevailing Party, in addition to all other amounts such Party shall be entitled to receive from the non-prevailing Party to such action, shall be awarded reasonable attorneys' fees and court costs.

8.7. Construction. Throughout this Agreement, the headings used in this Agreement are included for purposes of convenience of reference only, and shall not affect the construction or interpretation of any of its terms; the singular shall include the plural and the plural shall include the singular, all genders shall be deemed to include other genders, wherever the context so requires, and the terms "including," "include" or derivatives thereof, unless otherwise specified, shall be interpreted in as broad a sense as possible to mean "including, but not limited to," or "including, by way of example and not limitation."

9.8. Miscellaneous. This Agreement (a) shall be governed by, and construed in accordance with, the laws of the State of Colorado applicable to contracts entered into and to be performed wholly within said State, (b) constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof, superseding all prior agreements, written or oral, (c) may not be amended, except in writing, (d) may be executed in counterparts, (e) shall be binding upon and inure to the benefit of each Party's successors and permitted assigns, (f) may not be assigned without the prior written consent of the other Party and (g) shall be enforceable, notwithstanding the unenforceability of any particular provision hereof, with respect to all other provisions hereof.

[Signature pages immediately follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first above written, notwithstanding the actual date of execution.

UNITED:

UNITED WATER AND SANITATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, acting by and through its Plum Creek Enterprise

By: _____
Robert A. Lembke, President

Attest:

By: _____
Title: _____

DRAFT

TOWN:

TOWN OF CASTLE ROCK,
a home rule municipality

By: _____

Title: _____

Attest:

By: _____

Title: _____

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